

STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING ON AMENDED JOINT PETITION OF THE
IMPERIAL IRRIGATION DISTRICT AND THE SAN DIEGO COUNTY WATER
AUTHORITY FOR APPROVAL OF A LONG-TERM TRANSFER OF CONSERVED
WATER PURSUANT TO AN AGREEMENT BETWEEN IID AND SDCWA, AND
APPROVAL OF CHANGES IN POINT OF DIVERSION, PLACE OF USE AND
PURPOSE OF USE UNDER PERMIT NO. 7643 (APPLICATION 7482).

FRIDAY, MAY 17, 2002
9:00 A.M.

BONDERSON BUILDING
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR 1564

CAPITOL REPORTERS (916) 923-5447

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
RICHARD KATZ

STAFF:

TOM PELTIER
ANDREW FECKO

COUNSEL:

DANA DIFFERDING

---oOo---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPRESENTATIVES

FOR IMPERIAL IRRIGATION DISTRICT:

ALLEN MATKINS LECK GAMBLE & MALLORY
501 West Broadway, 9th Floor
San Diego, California 92101-3577
BY: DAVID L. OSIAS, ESQ.
and
MARK HATTAM, ESQ.

FOR SAN DIEGO COUNTY WATER AUTHORITY:

HATCH AND PARENT
21 East Carillo Street
Santa Barbara, California 93102-0720
BY: SCOTT SLATER, ESQ.
and
STEPHANIE HASTINGS, ESQ.

FOR COACHELLA VALLEY WATER DISTRICT:

BOLD, POLISNER, MADDOW, NELSON & JUDSON
500 Ygnacio Valley Road, Suite 325
Walnut Creek, California 94596
BY: ROBERT MADDOW, ESQ. - SPECIAL COUNSEL

REDWINE AND SHERRILL
1950 Market Street
Riverside, California 92501
BY: GERALD SHOAF, ESQ.
and
STEVEN B. ABBOTT, ESQ.

FOR METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA:

ELLISON, SCHNEIDER & HARRIS
2015 H Street
Sacramento, California 95814-3109
BY: ANNE SCHNEIDER, ESQ.
and
ROBERT E. DONLAN, ESQ.

FOR WILLIAM DU BOIS:

WILLIAM DU BOIS
3939 Walnut Avenue, #144
Carmichael, California 95608

1 REPRESENTATIVES (CONT.)

2 FOR CALIFORNIA FARM BUREAU FEDERATION:

3 HENRY E. RODEGERDTS, ESQ.
4 2300 River Plaza Drive
5 Sacramento, California 95833

6 FOR LARRY GILBERT:

7 LARRY GILBERT
8 945 East Worthington Road
9 Imperial, California 92251

10 FOR COUNTY OF IMPERIAL:

11 ANTONIO ROSSMANN, ESQ.
12 380 Hayes Street
13 San Francisco, California 94102

14 FOR DEFENDERS OF WILDLIFE:

15 BRENDAN FLETCHER
16 926 J Street, Suite 522
17 Sacramento, California 95814
18 and
19 KIMBERLEY W. DELFINO

20 FOR COLORADO RIVER INDIAN TRIBES:

21 OFFICE OF THE ATTORNEY GENERAL
22 ROUTE 1, Box 23-B
23 Parker, Arizona 85344
24 BY: ERIC SHEPARD, ESQ.
25 and
LOLA RAINEY, ESQ.

FOR SALTON SEA AUTHORITY:

26 TOM KIRK
27 78-401 Highway 111, Suite T
28 La Quinta, California 92253
29
30 BEST BEST & KRIEGER
31 74-760 Highway 111, Suite 200
32 Indian Wells, California 92210
33 BY: ROBERT W. HARGREAVES, ESQ.

34

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPRESENTATIVES (CONT.)

FOR NATIONAL WILDLIFE FEDERATION:

KEVIN DOYLE
3500 Fifth Avenue, Suite 101
San Diego, California 92103

COUNSEL:

JOHNSON & CROSS
402 West Broadway, Suite 1140
San Diego, California 91201
BY: KEVIN K. JOHNSON, ESQ.

FOR NATIONAL AUDUBON SOCIETY - CALIFORNIA:

LAW OFFICES OF WILLIAM YATES
8002 California Avenue
Fair Oaks, California 95628
BY: WILLIAM YATES, ESQ.

FOR PLANNING AND CONSERVATION LEAGUE:

KAREN DOUGLAS
926 J Street, Suite 612
Sacramento, California 95814

FOR REGIONAL WATER QUALITY CONTROL BOARD - REGION 7:

PHILIP GRUENBERG

COUNSEL:

LORI OKUN
1001 I Street
Sacramento, California 95814

SIERRA CLUB CALIFORNIA:

JIM METROPULOS
1414 K Street, Suite 500
Sacramento, California 95814

---oOo---

1	INDEX	
2		PAGE
3	RESUMPTION OF HEARING:	2240
4	AFTERNOON SESSION:	2343
5	STATEMENT:	
6	BY MR DU BOIS:	2351
7		
8	COUNTY OF IMPERIAL: (CONT.)	
9	CROSS-EXAMINATION OF PANEL OF TWO:	
10	BY MR. OSIAS	2240
11	BY THE BOARD	2276
12	REDIRECT EXAMINATION	
13	BY MR. ROSSMANN	2276
14	RECROSS-EXAMINATION	
15	BY MR. HARGREAVES	2291
16	BY MR. SLATER	2292
17	BY MR. OSIAS	2297
18	FURTHER REDIRECT EXAMINATION	
19	BY MR. ROSSMANN	2302
20		
21	COLORADO RIVER INDIAN TRIBES:	
22	OPENING STATEMENT	
23	BY MR. SHEPARD	2303
24		
25	CHARLES LAND:	
26	DIRECT EXAMINATION	
27	BY MR. SHEPARD	2309
28	CROSS-EXAMINATION	
29	BY MS. DOUGLAS	2318
30	BY MS. HASTINGS	2324
31	BY MR. HATTAM	2332
32	BY STAFF	2339, 2349
33	REDIRECT EXAMINATION	
34	BY MR. SHEPARD	2343
35	RECROSS-EXAMINATION	
36	BY MR. HATTAM	2348
37		
38		
39		
40		
41		
42		
43		
44		
45		

1	INDEX	
2		PAGE
3	LARRY GILBERT:	
4	OPENING STATEMENT	
5	BY MR. GILBERT	2354
6	GEORGE RAY:	
7	DIRECT EXAMINATION	
8	BY MR. GILBERT	2354
9	CROSS-EXAMINATION	
10	BY MR. DU BOIS	2371
11	BY MR. FLETCHER	2375
12	BY MR. SLATER	2379
13	BY MR. OSIAS	2382
14	BY STAFF	2387
15	REDIRECT EXAMINATION	
16	BY MR. GILBERT	2392

---oOo---

17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SACRAMENTO, CALIFORNIA

FRIDAY, MAY 17, 2002, 9:00 A.M.

---oOo---

CHAIRMAN BAGGETT: Mr. Osias, we are back on the record.

MR. OSIAS: Good morning.

Thank you.

---oOo---

CROSS-EXAMINATION OF COUNTY OF IMPERIAL

BY IMPERIAL IRRIGATION DISTRICT

BY MR. OSIAS

MR. OSIAS: Mr. Spickard, you filed your first testimony dated April 10th. Do you remember that?

MR. SPICKARD: Yes.

MR. OSIAS: How long did you have to prepare that?

MR. SPICKARD: My guess would be from the beginning of April.

MR. OSIAS: About ten days?

MR. SPICKARD: If that.

MR. OSIAS: On Page 3 of that testimony you identify five materials, you call them, that you reviewed, correct?

MR. SPICKARD: Some, yes.

MR. OSIAS: That is all you had available at that time to look at?

MR. SPICKARD: That is all that I had a chance to get

1 through. I believe there were a few other materials, and I
2 may have actually looked at some others that weren't written
3 down here. Those are the most meaningful one.

4 MR. OSIAS: Mr. Rossmann sent you that material?

5 MR. SPICKARD: Combination of Mr. Rossmann and Mr.
6 Heuberger's office.

7 MR. OSIAS: On April 24th, ERA submitted comments on
8 its EIR/EIS?

9 MR. SPICKARD: That is correct.

10 MR. OSIAS: They are not signed. I take it you were
11 involved in that?

12 MR. SPICKARD: Yes, I was.

13 MR. OSIAS: Primarily?

14 MR. SPICKARD: There was a combination of staff
15 comments from the planning department, or from others in the
16 county, let me put it that way.

17 MR. OSIAS: I'm talking about the ERA.

18 MR. SPICKARD: The ERA was very much with me with some
19 assistance from others.

20 MR. OSIAS: At the end of that on Page 3 you identify a
21 longer list of documents your reviewed?

22 MR. ROSSMANN: Would you please clarify that?

23 MR. OSIAS: Well, if you'll pardon the length of the
24 that, it is Attachment B to Exhibit B to County of Imperial
25 1A, and it is entitled Comments on the Socioeconomic Section

1 of the Draft Environmental Impact Report/Statement for
2 Imperial Irrigation District Water Conservation Transfer
3 Project and Draft Habitat Conservation Plan by Economics
4 Research Associated, April 24, 2002.

5 MR. SPICKARD: We have it in front of us.

6 MR. OSIAS: I was just, you know, sort of looking on
7 Page 3 and 4, you list a lengthier set of documents than you
8 did in your original testimony?

9 MR. SPICKARD: That's true.

10 MR. OSIAS: It was two weeks later and you had time to
11 go through more material?

12 MR. SPICKARD: That's correct.

13 MR. ROSSMANN: And these were sent to you by Mr.
14 Rossmann and/or Mr. Heuberger?

15 MR. SPICKARD: That's correct.

16 MR. OSIAS: I take it, for example, if one of those two
17 decided you should read the material on the Palo Verde Test
18 Program, which is on the top of Page 4?

19 MR. SPICKARD: Yeah. By implication of whatever they
20 sent me they thought was relevant, yes.

21 MR. OSIAS: Maybe to make it easier, you didn't do an
22 academic search to come up with these documents?

23 MR. SPICKARD: No.

24 MR. OSIAS: So these were given to you by somebody at
25 the County or Mr. Rossmann?

1 MR. SPICKARD: That's right.

2 MR. OSIAS: I was just trying to see if you had a role
3 in the selection of materials.

4 MR. SPICKARD: I did have a role to the extent in Mr.
5 Rossmann's office, I went through even more materials than
6 are on this and his staff copied a variety of things that I
7 wanted to look at.

8 MR. OSIAS: Where is your office?

9 MR. SPICKARD: San Francisco.

10 MR. OSIAS: So you are not too far from Mr. Rossmann?

11 MR. SPICKARD: It was a quick public transit ride.

12 MR. OSIAS: Finally, you did Exhibit 3A, which is your
13 supplemental testimony on May 13th, right?

14 MR. SPICKARD: That's right.

15 MR. OSIAS: So from the beginning of May through May
16 13th, now we sort of covered your work period other than
17 getting ready for this hearing?

18 MR. SPICKARD: That's true.

19 MR. OSIAS: Although not listed, ultimately you got a
20 chance to review Dr. Smith's testimony as well as we heard
21 in your direct?

22 MR. SPICKARD: Yes.

23 MR. OSIAS: I take it, for example, you mentioned both
24 the direct and in your written testimony that you reviewed
25 the CIC report, which was commissioned by CAC and which has

1 been attached as Attachment D to County of Imperial Exhibit
2 1A?

3 MR. SPICKARD: That's right.

4 MR. OSIAS: You saw it in its draft form even before
5 April 10th and then in its final form?

6 MR. SPICKARD: That's right.

7 MR. OSIAS: You told us you didn't think for what you
8 are doing, anyway, there was material differences?

9 MR. SPICKARD: That's correct.

10 MR. OSIAS: Since then you at least discovered that
11 after reviewing Dr. Smith's work, as to the question of
12 selective crop fallowing, there were probably at least
13 additional factors to consider that hadn't been mentioned by
14 CIC, for example, agricultural rotation practices?

15 MR. SPICKARD: That's right.

16 MR. OSIAS: So that throws at least a question into
17 their conclusion about selective fallowing, correct?

18 MR. SPICKARD: Yes. I'm not sure that there is so much
19 a conclusion as just a suggestion.

20 MR. OSIAS: So at least, as you sit here, you are not
21 prepared to express an opinion or recommendation with
22 respect to selective crop fallowing?

23 MR. SPICKARD: No, I am not.

24 MR. OSIAS: It is your opinion upon your review of
25 their work and in light what you have read from Dr. Smith

1 that they are not expressing an opinion that that should be
2 pursued either?

3 MR. SPICKARD: I don't believe so. They certainly
4 aren't defining it as a recommended program.

5 MR. OSIAS: Now, at the risk of being a bit of a
6 simpleton, economic analysis is somewhat like a computer, if
7 you put mistaken data in you get mistaken conclusions out?

8 MR. SPICKARD: I suppose you could say that.

9 MR. OSIAS: If I could have you turn to the CIC report,
10 which is, again, Attachment D to Exhibit 1A, and I am
11 looking not at the executive summary but the full report.

12 Do you have that?

13 MR. SPICKARD: Yes.

14 MR. OSIAS: I am on the page that starts with
15 introduction. If you turn to Page 2, you see at the bottom
16 there is a paragraph that starts with the words "At the
17 first limit of transfers"?

18 MR. SPICKARD: Uh-huh.

19 MR. OSIAS: You have to say yes.

20 MR. SPICKARD: Yes.

21 MR. OSIAS: If you read that paragraph, does that not
22 lead you to believe that CIC described the first water
23 moving as being the Coachella water?

24 MR. SPICKARD: I am not sure I see where it necessarily
25 implies that it is the first water, but it's the lowest

1 priced water.

2 MR. OSIAS: It says: At the first limit of transfer
3 (130,000) the least revenues are obtained, at 50,000
4 transferred to Coachella, and next 80,000 acre-feet
5 transferred at 125.

6 Fifty and 80 equals 130.

7 MR. SPICKARD: I'm not sure what "the first limit of
8 transfers" means. I don't know if that is as they are
9 calculating it somehow or if that is actually water
10 flowing.

11 MR. OSIAS: If you flip back to Page 1, and you see the
12 bottom paragraph on Page 1 where it says: The lowest prices
13 obtained for the first 50,000 acre-feet is transferred to
14 Coachella?

15 MR. SPICKARD: Okay.

16 MR. OSIAS: Now, I grant you the word "if" is in there,
17 but, again, at least they are describing the prospect of the
18 first 50- going to Coachella, correct?

19 MR. SPICKARD: It certainly sounds like it there.

20 MR. OSIAS: If you turn around, you'll see Exhibit 1,
21 which has been admitted into evidence. I have to get my
22 pointer. I practiced this before everybody arrived.

23 Over here you have a color code for which transfers are
24 which. Do you see those?

25 MR. SPICKARD: Yes.

1 MR. OSIAS: You will see Coachella is this color, for
2 the record is blue or purple. You see that?

3 MR. SPICKARD: Okay.

4 MR. OSIAS: It starts over here in roughly 2007?

5 MR. SPICKARD: Yes.

6 MR. OSIAS: And the green is the IID/San Diego
7 transfer, right?

8 MR. SPICKARD: Okay.

9 MR. OSIAS: And it starts in 2003?

10 MR. SPICKARD: Yes.

11 MR. OSIAS: So Coachella is not the first water being
12 transferred, correct?

13 MR. SPICKARD: That could very well be.

14 MR. OSIAS: This has been admitted into evidence, and
15 there's been no dispute about the sequence.

16 MR. SPICKARD: Clearly the Coachella is not on the
17 first transfer.

18 MR. OSIAS: And if it's the cheapest water and it is
19 not coming first, that would certainly affect the present
20 value calculation, would it not?

21 MR. SPICKARD: Present value calculation would take
22 into account both the time and the price of each of the
23 transfers.

24 MR. OSIAS: And you will see the green steps in 20,000
25 increments. It's a little hard to see on that scale.

1 MR. SPICKARD: Okay.

2 MR. OSIAS: The purple is in 5,000 increments, at least
3 you can see from the picture it is on a different scale than
4 the green, correct?

5 MR. SPICKARD: Okay.

6 MR. OSIAS: The economic conclusion about the
7 feasibility of the revenue stream should take into account
8 both of the timing of the transfer, the price and, in fact,
9 the increment of the ramp up, correct? In other words, if
10 you got 20,000 at a high price and 5,000 at a low price in
11 a given year, that is relevant to your calculation versus
12 20,000 of each?

13 MR. SPICKARD: Yeah.

14 MR. OSIAS: And tell you tell that CIC did that in this
15 analysis correctly?

16 MR. SPICKARD: I don't recall where CIC had tried to
17 analyze the feasibility of the entire revenue stream. I
18 read them to be analyzing the feasibility of incremental
19 components of the Coachella transfer totally separately from
20 the feasibility of the San Diego transfer. And the point
21 that they had made was that at \$50 a foot it seemed
22 infeasible to do the on-farm conservation measures that had
23 been used as a benchmark technology.

24 Whereas, it seemed to be that it was economically
25 feasible at the \$250 price that San Diego was doing. But I

1 don't think they were trying to do a combined program of
2 mixing the transfers from both -- to both destinations.
3 They seemed to be just commenting on the marginal cost of
4 each one.

5 MR. OSIAS: The EIR/EIS now for the transfer analyzed
6 what, I'll call bookends, right, all following, correct?

7 MR. SPICKARD: Yes.

8 MR. OSIAS: And no following, all on-farm and system?

9 MR. SPICKARD: Yes, that is my understanding as well.

10 MR. OSIAS: And at least in comparing those two
11 alternatives you could see the contrast, correct, in the
12 EIR?

13 MR. SPICKARD: Yes.

14 MR. OSIAS: All following produced a substantial
15 negative economic impact to the County? That would be
16 County as the entity, to the County in general.

17 MR. SPICKARD: That's right.

18 MR. OSIAS: And the no following all positive sort of
19 work produced a substantial economic benefit, correct?

20 MR. SPICKARD: That's correct.

21 MR. OSIAS: In your comments to the EIR/EIS in
22 Attachment B you wrote, quote, as described in the comments
23 below, ERA concludes that the most positive end of the range
24 is unachievable.

25 Do you remember writing that?

1 MR. SPICKARD: I remember writing that.

2 MR. OSIAS: Further below you wrote: As was
3 demonstrated on Pages 4 and 5 of the CIC research review of
4 the Draft EIR/EIS, these payments are not sufficient to fund
5 the needed improvements. As a consequence the proposed
6 project is economically infeasible.

7 So my question to you is: Were you relying on CIC's
8 conclusion with respect to economic infeasibility when you
9 concluded it wasn't infeasible?

10 MR. SPICKARD: Yes, completely.

11 MR. OSIAS: In fact, as you described just a moment ago
12 they either did not take into account this blended project
13 components with the proper sequence and the proper ramp up,
14 they either did not do it or they didn't do it for the
15 purpose of analyzing the complete blend for economic
16 feasibility, correct?

17 MR. SPICKARD: I think that is correct.

18 MR. OSIAS: I take it at least it is not your opinion
19 now that this project is not economically feasible?

20 MR. SPICKARD: I guess my opinion now is the same as
21 what I was trying to imply in my written testimony,
22 concurring with CIC's, it is not that it is -- actually, now
23 that I think about it, perhaps infeasible was the wrong
24 word. It would be that the positive benefits described
25 would not be achievable. It wouldn't be as positive as was

1 stated in the EIR.

2 MR. OSIAS: Do you believe the EIR used this schedule
3 of transfers and prices? When I say "this," I am referring
4 to the 1A exhibit, schedule.

5 MR. SPICKARD: You know, I guess I didn't understand
6 that they had used that schedule.

7 MR. OSIAS: If they had, then there might be some
8 disagreement with CIC's conclusion?

9 MR. SPICKARD: If they had and the output of the
10 analysis of the positive 250 jobs, if I recall that being
11 the right amount at that bookend, was a result of this
12 schedule, then the 250 jobs should be achievable.

13 MR. OSIAS: You would, at that point if you confirmed
14 that this schedule was used, modify your own opinion as
15 expressed in the comments that you submitted for the ERA
16 with respect to the infeasibility?

17 MR. SPICKARD: Yes, I would.

18 MR. OSIAS: It is also important that the price be all
19 accurate in terms of trying to calculate economic
20 feasibility, correct?

21 MR? SPICKARD: Yes.

22 MR. OSIAS: Again, just to be a simpleton for one
23 moment, if I paid you \$50 today or I promised to pay you
24 \$50 in 15 years, those two promise are both not worth the
25 same, are they?

1 MR. SPICKARD: That's correct.

2 MR. OSIAS: In fact, the \$50 in 15 years has a value
3 like \$40 or something as compared to \$50 dollars today, you
4 discount it?

5 MR. SPICKARD: That's right.

6 MR. OSIAS: So if you use a pricing schedule that
7 doesn't track at minimum inflation, then you have to convert
8 it to a constant dollar equivalent, correct, in order to
9 analyze the economic output of this entire sequence of
10 revenue stream?

11 MR. SPICKARD: Well, yeah. If you are going to analyze
12 it in present value terms, you do need to understand that
13 there will be inflation in those current dollars.

14 MR. OSIAS: Let me get away from present value for one
15 minute. If you are trying to answer the question can we
16 afford to pay the projects when they come on line, we need
17 to know what the purchasing power of the payments in the
18 year it is made, correct?

19 MR. SPICKARD: Right.

20 MR. OSIAS: If it was stated as \$50 in today's dollars,
21 and it didn't ever adjust for inflation, then for spending
22 in year 15 you no longer have \$50 of purchasing power?

23 MR. SPICKARD: That's correct.

24 MR. OSIAS: You'd reduce that price for analysis of
25 feasibility?

1 MR. SPICKARD: Yes.

2 MR. OSIAS: If you look at the bottom of Page 1 of the
3 CIC report, you see the sentence says -- we were just
4 there. It is in the same bottom paragraph I'm very fond
5 of. After 2001 -- you see the sentence, the second sentence
6 in the paragraph. The values of this \$52 decreases
7 gradually in constant dollars to account for future
8 inflation.

9 MR. SPICKARD: Okay.

10 MR. OSIAS: Is that the phenomenon we were just talking
11 about? Maybe it is the next sentence that is more
12 important.

13 MR. SPICKARD: It is.

14 MR. OSIAS: This has the effect of lowering the real
15 value of constant future prices.

16 MR. SPICKARD: Yes.

17 MR. OSIAS: So the top of the next page it actually
18 says at the end that the \$50 is only worth \$32.

19 MR. SPICKARD: Okay.

20 MR. OSIAS: From reading this now and refreshing your
21 recollection, do you believe that CIC analyzed the revenue
22 stream for the \$50 on the assumption that it was not being
23 indexed to inflation?

24 MR. SPICKARD: It appears to be that they were looking
25 at this as a constant \$50 over time, and then decreasing it

1 to account for the inflation that was going on. It looks as
2 if they were not anticipating a programmed ramp up in the
3 fees paid, the transfer fees paid.

4 MR. OSIAS: Let me clarify your answer. Isn't it fair
5 to say that at least in the discussion in the report they
6 did not factor in that the \$50 being paid might itself
7 increase under the contract provisions by an inflation
8 index?

9 MR. SPICKARD: That is the way I would interpret this
10 paragraph T.

11 MR. OSIAS: If you look at the next paragraph with
12 respect to the IID/San Diego transfer, they make the same
13 analysis, correct, although there are different prices.
14 Again, they analyze it as if there is no adjustment for
15 inflation built into the price?

16 MR. SPICKARD: I am not sure I understand what you are
17 saying. I read this to say that they do understand that it
18 is increasing over the first 16 years.

19 MR. OSIAS: Yes. And then it stops, no inflation after
20 that. No inflation index after that, correct?

21 MR. SPICKARD: That is what it looks like.

22 MR. OSIAS: And the increase in the first 16 years
23 isn't described as an inflation index, is it, in this
24 paragraph?

25 MR. SPICKARD: It's under the terms of the agreement.

1 MR. OSIAS: If they just had a stepped price in the
2 agreement that it increased independent of inflation, that
3 could at least fit within this description in the first
4 sentence?

5 MR. SPICKARD: That could, yes.

6 MR. OSIAS: They don't attribute the cause to the
7 increase?

8 MR. SPICKARD: Right. It is part of the agreement as
9 part of being an automatic inflation event.

10 MR. OSIAS: Then they include no inflation adjustment
11 after that increased period ends?

12 MR. SPICKARD: Yes.

13 MR. OSIAS: You can't nod and you can't say uh-huh.
14 Mr. Rossmann reminded you.

15 My colleague, Mr. Hattam, is going to hand you IID
16 Exhibit 22 which has the same misfortune of being multiple
17 documents under one number. The first one should be what we
18 call the Quantification Settlement Agreement. We tagged the
19 relevant page, but you might want to look at the first page
20 right behind the tabbed number so that you can see that the
21 -- go to Tab 22, look at the title so you know I'm telling
22 you the truth.

23 MR. SPICKARD: Okay.

24 MR. OSIAS: Now flip to page -- I may have
25 unfortunately tagged them all, even though I had plenty of

1 time. Flip to Page 6.

2 MR. SPICKARD: I have it.

3 MR. OSIAS: You see at the bottom what looks like the
4 definition section of the agreement, right?

5 MR. SPICKARD: Okay.

6 MR. OSIAS: You see inflation index?

7 MR. SPICKARD: Yes.

8 MR. OSIAS: That is a formula, is it not?

9 MR. SPICKARD: Yes, it is.

10 MR. OSIAS: And PPI, could that be the producers --
11 actually it's defined on the next page. Producer Price
12 Index for materials and component of construction. Are you
13 aware of that index being produced?

14 MR. SPICKARD: I've heard of it, yes, and it is defined
15 on the next page.

16 MR. OSIAS: The GDPIPD, that could be the gross
17 domestic product implicit price deflator?

18 MR. SPICKARD: That could be.

19 MR. OSIAS: If you look on the page before, that is
20 what it is defined as?

21 MR. SPICKARD: All right.

22 MR. OSIAS: I don't want you to go all right because I
23 know it is easy to do. I want you to confirm it.

24 MR. SPICKARD: Yes, it is defined as that.

25 MR. OSIAS: You know what that is?

1 MR. SPICKARD: I don't commonly use that, but I believe
2 that it is -- I certainly use the source here, Bureau of
3 Economic Analysis, and I'm confident that it's a standard
4 federal index.

5 MR. OSIAS: Both the GDPIP and PPI are methods of
6 measuring inflation for certain components of the economy,
7 correct?

8 MR. SPICKARD: That's correct.

9 MR. OSIAS: This document uses an average of those two
10 indexes as an inflation index, does it not?

11 MR. SPICKARD: Yes, it does. That is the formula.

12 MR. OSIAS: If we turn to Page 7, do you see the
13 definition for, quote, N dollars?

14 MR. SPICKARD: Yes.

15 MR. OSIAS: Doesn't that definitely provide that N
16 dollars means essentially the nominal dollar amount adjusted
17 for a future year by the inflation index?

18 MR. SPICKARD: Yes.

19 MR. OSIAS: Now if we flip to the agreement that is
20 next behind the QSA, you will see what we call in shorthand
21 the IID/Coachella Acquisition Agreement.

22 MR. SPICKARD: Okay.

23 MR. OSIAS: On Page 6 of that agreement there is a
24 heading called price.

25 MR. SPICKARD: Yes.

1 MR. OSIAS: And, for example, it says price for the
2 first 50,000. You see that heading?

3 MR. SPICKARD: Yes, I do.

4 MR. OSIAS: In fact, the price -- it reads: The price
5 per acre-foot for the first 50,000 acquisition shall be \$50
6 in 1999 dollars?

7 MR. SPICKARD: That's correct.

8 MR. OSIAS: So in 1999 dollars is N dollars, which you
9 would then adjust by the inflation index, correct?

10 MR. SPICKARD: Correct.

11 MR. OSIAS: This is, in fact, an indexed price, is it
12 not?

13 MR. SPICKARD: It is.

14 MR. OSIAS: So is the \$125 right below it?

15 MR. SPICKARD: Yes.

16 MR. OSIAS: Real quickly, if I show you Exhibit 7,
17 which is the IID -- that is not in there. Mr. Hattam is
18 going to hand it to you.

19 This is the IID/San Diego agreement, correct?

20 MR. SPICKARD: Yes.

21 MR. OSIAS: If you turn to Page 7 of that agreement --

22 MR. SPICKARD: I've got Article 7.

23 MR. OSIAS: No, Page 7, it's in article one. It is
24 your price page. You see effective date dollars?

25 MR. SPICKARD: Yes.

1 MR. OSIAS: That is a definition which again deals with
2 how to convert nominal dollars to a future price, correct?

3 MR. SPICKARD: Yes.

4 MR. OSIAS: And unlike the other definition we looked
5 at, this one uses the Consumer Price Index?

6 MR. SPICKARD: Yes, it does.

7 MR. OSIAS: You are familiar with that?

8 MR. SPICKARD: Yes, I am.

9 MR. OSIAS: That is a common tool for adjusting prices?

10 MR. SPICKARD: Yes, it is.

11 MR. OSIAS: If you'll take my word for it that the
12 price here has the same N dollars definition and a price
13 that is stated in dollars in that way. The San Diego price
14 is inflation adjusted, correct?

15 MR. SPICKARD: I will take your word for that.

16 MR. OSIAS: Now it doesn't appear that CIC took either
17 of these agreements into account in determining that there
18 was not an inflation index, correct?

19 MR. SPICKARD: That is the way it appears from their
20 description in their paragraphs here, yes.

21 MR. OSIAS: So not only might they not have properly
22 analyzed the date, the volume and the sequence for the
23 collective improvement project, but they got the prices
24 wrong at least with respect to inflation; is that --

25 MR. ROSSMANN: Your Honor, I'm going to object to the

1 form of the question. He has some predicates that may or
2 may not be true. He can just ask the simple question. That
3 would be appreciated.

4 MR. OSIAS: It may be appreciated, but I wasn't
5 finished. Let me finish my question, please, and then
6 object.

7 CHAIRMAN BAGGETT: Start over and rephrase it.

8 MR. OSIAS: I will get through, and then he can see if
9 he objects or not.

10 Based on what we reviewed today of the CIC report, what
11 you've reviewed to date, and given our discussion of the
12 sequence of the combined most positive project going
13 forward, and that means the order they come on line, and the
14 dates that they come on line, the different projects, and
15 the volumes that they come on line, and that the price is
16 inflation adjusted, it doesn't appear to you that those
17 factors were taken into account in the CIC report, does it?

18 MR. ROSSMANN: Your Honor, I asked for him to ask
19 whether four factors were simultaneously taken into account.
20 I don't object to a question that goes through each
21 individual factor.

22 MR. OSIAS: I can't ask him if they were all taken into
23 account?

24 Does it appear that they were all taken into account?

25 CHAIRMAN BAGGETT: I think that that is legitimate.

1 MR. ROSSMANN: That is a fair question.

2 CHAIRMAN BAGGETT: That is fair.

3 MR. SPICKARD: It does not appear that they were all
4 taken into account.

5 MR. OSIAS: In fact, you can't tell from this report
6 that you reviewed whether any of them were taken into
7 account, correct?

8 MR. SPICKARD: I'd have to go through them one by one.
9 But it is quite possible.

10 MR. OSIAS: If the inflation one was taken into
11 account, it was taken into account erroneously, right?

12 MR. SPICKARD: It looks like the inflation one was not
13 taken into account.

14 MR. OSIAS: Nobody gave you these agreements to review,
15 did they?

16 MR. SPICKARD: I still have materials in my office that
17 I have not reviewed. It is hard for me to say what was
18 given to me or not in that regard. I asked for summaries of
19 some of these things, the Quantification Settlement
20 Agreement, for example, just because I didn't want to take
21 the time to read through the whole agreement.

22 MR. OSIAS: Would it be fair, then, probably fair to
23 you to say that your opinion expressed so far in either your
24 first testimony or the comments to the EIR or your
25 supplemental testimony were not based on your personal

1 review of these contracts?

2 MR. SPICKARD: That is true.

3 MR. OSIAS: And I take it that especially because of
4 the opinions expressed by you in the comments with respect
5 to economic feasibility, they are solely dependent on some
6 conclusions made by CIC?

7 MR. SPICKARD: That is correct. We have not done an
8 independent analysis of our own. We have simply been
9 reviewing the work performed by others.

10 MR. OSIAS: If you still have Exhibit 7 there in front
11 of you --

12 MR. SPICKARD: Yes, I do.

13 MR. OSIAS: Leave it handy. Flip to Page 2 of your
14 comments to the EIR/EIS for the transfer. That again is
15 Attachment B to Exhibit B -- Attachment B to Attachment B to
16 Exhibit 1A.

17 MR. SPICKARD: Which page?

18 MR. OSIAS: Two.

19 There is a paragraph with a paren four next to it, do
20 you see that?

21 MR. SPICKARD: Yes.

22 MR. OSIAS: Do you see the first two sentences of that
23 paragraph? Would you read those to yourself?

24 MR. SPICKARD: Yes.

25 MR. OSIAS: Is it fair to summarize those two sentences

1 as saying because San Diego and the other agencies can take
2 up to a certain amount, they may not take it all, and hence
3 the revenue would be limited to the amount taken?

4 MR. SPICKARD: That is my understanding.

5 MR. OSIAS: Would you turn to Page 40 of the San
6 Diego/IID agreement? See Paragraph 6.5. You have to say
7 yes to that.

8 MR. SPICKARD: Yes.

9 MR. OSIAS: So I know you are looking at it.

10 MR. SPICKARD: I'm looking at it.

11 MR. OSIAS: I will give you a second to look at it.

12 Have you now read the paragraph?

13 MR. SPICKARD: Yes.

14 MR. OSIAS: The paragraph starts with a definition of
15 how IID effects a transfer, correct?

16 MR. SPICKARD: Yes.

17 MR. OSIAS: Essentially, it says it leaves the water in
18 the river, correct?

19 MR. SPICKARD: Right.

20 MR. OSIAS: And from then on it is San Diego's
21 obligation or responsibility to get it, correct?

22 MR. SPICKARD: Correct.

23 MR. OSIAS: Doesn't it say that San Diego can take all,
24 some or none of the water left in the river?

25 MR. SPICKARD: That is the implication, yes.

1 MR. OSIAS: Well, do you see the sentence that reads:
2 The Authority has no duty to divert any or all of the
3 conserved water?

4 MR. SPICKARD: Right. Yes, I do.

5 MR. OSIAS: The next sentence says but it doesn't
6 matter, they have to pay for all of it anyway, right?

7 MR. SPICKARD: That's correct.

8 MR. OSIAS: Isn't the statement on Page 2, in those
9 first two sentences of that Paragraph 4 incorrect?

10 MR. SPICKARD: Yes, it is. I didn't understand that,
11 in fact, the payments were guaranteed even though the water
12 was not.

13 Learn something every day.

14 MR. OSIAS: Did that information regarding the payments
15 and the up-to obligations come to you from CIC?

16 MR. SPICKARD: That is certainly where I had read it
17 first. That was one of the first documents I had
18 reviewed. And I think that was the understanding that I
19 took with me as I scanned through other materials from that
20 date forward.

21 MR. OSIAS: That at least is probably another error
22 that they made?

23 MR. SPICKARD: Sounds like it.

24 MR. OSIAS: Are you familiar with the expression "a one
25 factory town"?

1 MR. SPICKARD: Yes.

2 MR. OSIAS: That is used sort of colloquially for a
3 location where people live and most of them are dependent on
4 a single industry or factory or whatever?

5 MR. SPICKARD: We typically use it as one industry
6 town.

7 MR. OSIAS: In a sense, and correct me if this is not a
8 fair description, but Imperial Valley is a one industry
9 community if you define the industry as agriculture?

10 MR. SPICKARD: Yeah, primarily. I think it's the
11 economic driver. I think it may be less than half of all
12 employment, but, yes, I think it is the major driver of the
13 economy.

14 MR. OSIAS: Whether we use the rust belt and the
15 closing of steel plants or the Detroit-Pontiac corridor
16 where we had car manufacturing divisions disappearing when
17 the Japanese automobile invasion took place or we use the
18 Pacific Northwest where lumber industries sometimes is cut
19 back, there are many instances where you as an economist
20 have observed economic dislocation from either the shutdown
21 or dramatic reduction in the key industry in the community,
22 correct?

23 MR. SPICKARD: Correct.

24 MR. OSIAS: In fact, probably those examples I just
25 recited are well-known ones, right?

1 MR. SPICKARD: Yes.

2 MR. OSIAS: Are you aware of any fully successful
3 mitigation program in those kinds of communities where the
4 employment base and economic activity has been preserved?

5 MR. SPICKARD: I think here in Sacramento when the Army
6 depo shut down. And typically the closure of Army bases,
7 military bases, have been one of the examples that we have
8 seen the most of around the country, in the last decade
9 anyway or so.

10 I believe the initial reemployment of people for a
11 computer manufacturer, essentially it replaced or more than
12 replaced the jobs that were lost. I think it has since
13 declined, perhaps you would have to say in the long run even
14 that one hasn't been that successful. There tends to be an
15 ongoing dislocation from a major factory closure or lumber
16 industry or something.

17 MR. OSIAS: It is a tough problem to solve when you
18 lose a key industry?

19 MR. SPICKARD: Yes.

20 MR. OSIAS: I should have mentioned base closures as
21 another one of the commonly discussed examples in the
22 economic literature, right?

23 MR. SPICKARD: Yes.

24 MR. OSIAS: Base closures happen in communities where
25 it is the key industry, but also in communities where it is

1 not the key industry, correct?

2 MR. SPICKARD: It happens in both, that's true.

3 MR. OSIAS: I assume the more diversified your economy
4 the easier, relative term, the easier it is to absorb the
5 economic disruption?

6 MR. SPICKARD: Or the harder it is to measure it. One
7 of the two.

8 MR. OSIAS: It is probably not fair to compare the City
9 of Sacramento with the County of Imperial, is it?

10 MR. SPICKARD: City of Sacramento is much more diverse,
11 the metropolitan area of Sacramento is a more diverse
12 economy.

13 MR. OSIAS: So maybe excluding the base closure here
14 you referenced, I'm just looking for models we can use that
15 would fully mitigate an economic dislocation from a
16 significant, not a closure, I'm not suggesting, but a
17 significant cutback in agricultural economics in Imperial.

18 MR. SPICKARD: I'm not sure if it is appropriate to
19 point out here, but it seems to me the most effective
20 mitigation is to design a program in such a way that you
21 don't create the unemployment to begin with. And, in fact,
22 in this case there seems to be opportunity to do that. You
23 are not necessarily closing the factory, if you will, you
24 are just restructuring the process in that factory to become
25 more labor intensive and less resource intensive,

1 substituting one input to production for another, and, in
2 fact, if you are increasing the labor portion you are
3 actually increasing the human economy and reducing the
4 demand on natural resources.

5 MR. OSIAS: Given the difficulty in curing the problem,
6 the old saying about an ounce of prevention versus a pound
7 of cure is very applicable. Is that fair?

8 MR. SPICKARD: That is fair.

9 MR. OSIAS: So from an economic perspective the
10 alternatives at each extreme were analyzed in the EIR/EIS,
11 the alternatives at the job enhancement extreme is the way
12 to go, at least from an economic perspective?

13 MR. SPICKARD: From an economic perspective that is
14 exactly right.

15 MR. OSIAS: Assume IID under this contract commits to
16 produce this volume of water that you see on 1A behind you
17 to San Diego for a minimum of 45 years.

18 Okay?

19 MR. SPICKARD: Okay.

20 MR. OSIAS: That is the long contract I put in front of
21 you. Assume essentially it requires them to do it and leave
22 it in the river.

23 Have that assumption in mind?

24 MR. SPICKARD: Okay.

25 MR. OSIAS: You have to say yes.

1 MR. SPICKARD: Yes.

2 MR. OSIAS: If IID went into the marketplace on an
3 annual basis, to find farmers who are willing to produce it,
4 does that expose IID to economic risk associated with not
5 being able to find farmers willing to produce it?

6 MR. SPICKARD: Yeah, I would think there is some risk.

7 MR. OSIAS: In fact, as an economist wouldn't you find
8 a significant mismatch between a commitment for years to
9 supply water versus the commitment to produce it? If those
10 don't match up very well that is an economic problem for the
11 party that is promised to supply it; isn't that right?

12 MR. SPICKARD: For IID?

13 MS. OSIAS: Yes.

14 MR. SPICKARD: Yes, it could be a significant problem.

15 MR. OSIAS: Wouldn't you as an economist expect that
16 those who realized that those who are providing the water
17 role, the farmers, that when they realize they have IID
18 stuck with a commitment to produce water for San Diego,
19 don't you think they'd have some bargaining leverage year to
20 year once they realized the commitment that IID had put
21 itself into?

22 MR. SPICKARD: You would think so.

23 MR. OSIAS: At least an economist would model that they
24 would exercise that economic leverage based on their
25 information about the situation Imperial Irrigation District

1 found itself?

2 MR. SPICKARD: Yes.

3 MR. OSIAS: They would be income maximizers, would they
4 not?

5 MR. SPICKARD: They certainly would. They would know
6 how much their water is worth to the District.

7 MR. OSIAS: Now, again, wouldn't the ounce of
8 prevention versus pound of cure model come into place by
9 suggesting that IID is out to protect itself by trying to
10 make commitments to San Diego from a supply perspective that
11 match as best it can production commitments by the farmers?

12 MR. SPICKARD: If I understand your question correctly,
13 you're theorizing that you could break the agreement and
14 somehow create some new relationship?

15 MR. OSIAS: No, the other way.

16 Wouldn't it be better if you committed to supply water
17 to San Diego for 45 years, to get a farmer to commit to
18 produce it for 45 years?

19 MR. SPICKARD: That would certainly make more sense.

20 MR. OSIAS: Mr. Heuberger, the County Board of
21 Supervisors has adopted a no fallowing policy, have they not?

22 MR. HEUBERGER: I don't believe they have.

23 MR. OSIAS: Maybe I described it wrong. A resolution
24 against fallowing farmland?

25 MR. HEUBERGER: They have taken a position against

1 following. They prefer to have no following.

2 MR. OSIAS: Sorry, I misdescribed it, then.

3 Isn't it correct that the County Board of Supervisors
4 have said, in fact, that they would not support following
5 without full socioeconomic impact mitigation?

6 MR. HEUBERGER: I am not sure they have taken that
7 position the way you described it.

8 MR. OSIAS: Have they taken a different position than
9 the one I described?

10 MR. HEUBERGER: They have taken several positions.

11 MR. OSIAS: On following?

12 MR. HEUBERGER: No.

13 MR. OSIAS: I'm limiting my question to following and
14 I'm limiting my question to socioeconomic impact
15 mitigation.

16 Has the County Board of Supervisors expressed a
17 willingness to support following without full socioeconomic
18 mitigation?

19 MR. HEUBERGER: No.

20 MR. OSIAS: And I think it is their position that
21 mitigation might be expensive, correct?

22 MR. HEUBERGER: I think they understand it might be
23 expensive.

24 MR. OSIAS: Isn't also the County Board of Supervisors'
25 position that they would not support a reduction of inflow

1 to the Salton Sea without full environmental mitigation?

2 MR. HEUBERGER: Again, the term "full" bothers me
3 because they certainly want to protect and make sure the
4 Salton Sea is addressed and the impacts mitigated. I am not
5 sure they have taken a position that it is full.

6 MR. OSIAS: So they might be willing to live with the
7 maximum practical mitigation?

8 MR. HEUBERGER: I didn't say that. I just said not
9 full.

10 MR. OSIAS: Somewhere between those two?

11 MR. HEUBERGER: Close to full.

12 MR. OSIAS: Thank you.

13 I assume the County realizes that that mitigation could
14 be quite expensive?

15 MR. HEUBERGER: Yes, we do.

16 MR. OSIAS: I believe also that the County Board of
17 Supervisors does not believe that the County itself has the
18 money to pay for either the socioeconomic mitigation or the
19 environmental mitigation, correct?

20 MR. HEUBERGER: That would be true.

21 MR. OSIAS: Isn't it also true that the County Board of
22 Supervisors would not support the transfer if it produced a
23 negative overall impact to the Valley rather than positive?

24 MR. HEUBERGER: That is likely their position, yes.

25 MR. OSIAS: Now the two Members of the Board of

1 Supervisors sit on the Board of the Salton Sea Authority,
2 correct?

3 MR. HEUBERGER: Yes.

4 MR. OSIAS: They know that you're involved as Planning
5 Director with lots of the details of this project, transfer
6 project, for the County, correct?

7 MR. HEUBERGER: I would hope so.

8 MR. OSIAS: You have talked to them about it?

9 MR. HEUBERGER: Yes.

10 MR. OSIAS: So at least --

11 MR. HEUBERGER: You asked me what they know. I don't
12 know what know.

13 MR. OSIAS: You know what you told them. You have told
14 them a lot of details, haven't you?

15 MR. HEUBERGER: I sure have.

16 MR. OSIAS: They either know what you tell them or they
17 forget, correct?

18 MR. HEUBERGER: That is what I'm getting at.

19 MR. OSIAS: And conversely, don't they report to you
20 about what is going on at the Salton Sea Authority with
21 respect to the restoration project?

22 MR. HEUBERGER: Can I take the Fifth on that?

23 MR. OSIAS: No.

24 MR. HEUBERGER: That is not necessarily a good
25 conclusion.

1 MR. OSIAS: So I shouldn't assume that you know what is
2 going on at the Salton Sea Authority?

3 MR. HEUBERGER: You shouldn't assume that they report
4 to me and tell me everything that is going on at the Salton
5 Sea Authority. I may have discussions with them
6 occasionally or on some portions of it.

7 MR. OSIAS: If the Salton Sea Authority had found
8 funding for socioeconomic mitigation, would you be aware of
9 that?

10 MR. HEUBERGER: Probably.

11 MR. OSIAS: As you sit here today, you are not aware of
12 them having found any such funding?

13 MR. HEUBERGER: I am not aware of it.

14 MR. OSIAS: If they had found funding for
15 environmental mitigation, that is the kind of thing that
16 would have been shared with you by your board members?

17 MR. HEUBERGER: Most likely, yes.

18 MR. OSIAS: And you are not aware of the Salton Sea
19 Authority having found any environmental mitigation money
20 either, correct?

21 MR. HEUBERGER: Not any guaranteed money.

22 MR. OSIAS: You were aware that the Salton Sea
23 Authority was trying to figure out what kind of restoration
24 project to do, right?

25 MR. HEUBERGER: Sorry, please repeat.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION OF COUNTY OF IMPERIAL

BY THE BOARD

CHAIRMAN BAGGETT: Have you analyzed and quantified the impacts of diminished air quality on the economy of Imperial?

MR. HEUBERGER: I have not.

MR. SPICKARD: We certainly have not.

CHAIRMAN BAGGETT: Only question I have.

Any questions?

Take a ten-minute break. I apologize I have to make a quick call, then resume with redirect of the two parties and recross.

(Break taken.)

CHAIRMAN BAGGETT: Back on the record.

Redirect of IC's witnesses.

---oOo---

REDIRECT EXAMINATION OF COUNTY OF IMPERIAL

BY MR. ROSSMANN

MR. ROSSMANN: Let me take this in somewhat reverse order from the simple to complex.

Mr. Spickard, you have in front of you both volumes, I and II, of the Draft EIR; is that correct?

MR. SPICKARD: That's right.

MR. ROSSMANN: When you came to my office when you initiated this assignment, you looked at both of those

1 volumes in my office; is that correct?

2 MR. SPICKARD: Yes, that's right.

3 MR. ROSSMANN: And I have asked you to look at them
4 again this morning just to refresh your recollection.

5 Would you look at, I think it is, Appendix A in Volume
6 II, which is right in front of you?

7 MR. SPICKARD: Yes, I have it right here.

8 MR. ROSSMANN: What is the title of that appendix?

9 MR. SPICKARD: Summary of IID/SDCWA Transfer
10 Agreement.

11 MR. ROSSMANN: Looking at that, that is not the
12 complete agreement on which Mr. Osias just interrogated you?

13 MR. SPICKARD: No. It's a summary.

14 MR. ROSSMANN: In fact, in Volume I and II, you can go
15 through both volumes, and not find a copy of that complete
16 agreement; is that correct?

17 MR. SPICKARD: That's correct.

18 MR. ROSSMANN: Mr. Heuberger, over the years you have
19 asked the Imperial Irrigation District to keep your office
20 updated with current documents; is that correct?

21 MR. HEUBERGER: Yes.

22 MR. ROSSMANN: Has that request always been responded
23 to immediately or completely?

24 MR. HEUBERGER: No.

25 MR. ROSSMANN: In fact, this very agreement is

1 something that you had often requested from the Imperial
2 Irrigation District?

3 MR. HEUBERGER: Yes.

4 MR. ROSSMANN: It was not always provided; it was not
5 provided in a timely manner?

6 MR. HEUBERGER: Correct.

7 MR. ROSSMANN: Mr. Heuberger, let's talk about the role
8 of Imperial County as a responsible agency under CEQA. I
9 believe you had some questions there.

10 If the County of Imperial were a responsible agency,
11 the County decision makers would have to certify that they
12 had reviewed the Environmental Impact Report on a particular
13 project for which they were a responsible agency; is that
14 correct?

15 MR. HEUBERGER: Yes.

16 MR. ROSSMANN: Under certain hypotheticals, one of
17 which was presented to you yesterday, the County might find
18 itself as a responsible agency with respect to this proposed
19 project; is that correct?

20 MR. HEUBERGER: Correct.

21 MR. ROSSMANN: I believe the example you gave was of a
22 grading permit for the construction of fish ponds; is that
23 correct?

24 MR. HEUBERGER: Of ponds, yes.

25 MR. ROSSMANN: Let's look at some other hypotheticals.

1 If the Imperial Irrigation District approved a final project
2 that required the Imperial County Board of Supervisors to
3 concur in that project, that circumstance would also make
4 the County of Imperial a responsible agency; is that
5 correct?

6 MR. SLATER: Objection. Calls for a legal
7 conclusion.

8 MR. ROSSMANN: Your Honor, we have the Planning
9 Director; I think he is pretty experienced.

10 CHAIRMAN BAGGETT: Overruled.

11 MR. ROSSMANN: Thank you, sir.

12 MR. HEUBERGER: Yes.

13 MR. ROSSMANN: And so then in that capacity the County
14 would need to certify that it had reviewed and considered
15 the Environmental Impact Report?

16 MR. HEUBERGER: Correct.

17 MR. ROSSMANN: And you would not recommend that the
18 Board of Supervisors act on report unless in your judgment
19 it was adequate?

20 MR. HEUBERGER: That's correct.

21 MR. ROSSMANN: Let's look at another potential,
22 hypothetical. If the Board of Supervisors were legally
23 authorized to make a determination that the transmission of
24 water to San Diego did not unreasonably affect the
25 environment or the economy of Imperial County, that action

1 would also make the County of Imperial a responsible agency,
2 would it not?

3 MR. HEUBERGER: Yes.

4 MR. ROSSMANN: Final example.

5 If -- first of all, who is the governing board of the
6 Imperial County Air Pollution Control District?

7 MR. HEUBERGER: The Air Pollution Control District has
8 a governing board which is also the same members as the
9 Board of Supervisors sitting as the Air Pollution Control
10 Board.

11 MR. ROSSMANN: Separate legal entity but same governing
12 board?

13 MR. HEUBERGER: Same people, separate entity.

14 MR. ROSSMANN: If the Air Pollution Control District
15 determined that the transfer project produced a new source
16 of PM-10 emissions and required a permit from that board,
17 that would also make the County of Imperial or at least its
18 Air Pollution Control District, a responsible agency, would
19 it not?

20 MR. HEUBERGER: It would make the Air District, yes.

21 MR. ROSSMANN: So to sum up, the County's interest in
22 this EIR is one of making sure that is adequate so that it
23 can use it in its own legal responsibilities?

24 MR. HEUBERGER: That is one, yes.

25 MR. ROSSMANN: Is Imperial County itself a purveyor of

1 water?

2 MR. HEUBERGER: The County government, no.

3 MR. ROSSMANN: Who are the purveyors of water to retail
4 customers within the Imperial Valley?

5 MR. HEUBERGER: Seven cities and a number of special
6 districts.

7 MR. ROSSMANN: They get their water in turn wholesale
8 from the Imperial Irrigation District; is that correct?

9 MR. HEUBERGER: The majority of them get it wholesale
10 from the IID, not all of them.

11 MR. ROSSMANN: Sir, are you familiar with the climate
12 in San Diego as well as the Imperial Valley where you've
13 lived so long?

14 MR. HEUBERGER: Yes, I am.

15 MR. ROSSMANN: In fact, you maintain a second home in
16 San Diego, do you not?

17 MR. HEUBERGER: You want to call it that, yes.

18 MR. ROSSMANN: Maybe you got us all curious. What is
19 the nature of your second home in San Diego?

20 MR. HEUBERGER: I maintain a 40-foot boat.

21 MR. ROSSMANN: In Mission Bay; is that correct?

22 MR. HEUBERGER: Mission Bay.

23 MR. PELTIER: That's the bay that Mr. Kirk wants to
24 drop 23 feet.

25 MR. HEUBERGER: I would object to that drop.

1 MR. ROSSMANN: In general, based on your observations
2 would you say that the evaporation rate is significantly
3 higher in the Imperial Valley than in the county of San
4 Diego?

5 MR. HEUBERGER: Yes.

6 MR. ROSSMANN: How about land use patterns, lot sizes
7 in general in Imperial Valley versus the County of San
8 Diego?

9 MR. HEUBERGER: Our residential lots tend to be larger
10 than average in San Diego.

11 MR. OSIAS: Mr. Chairman, let me just object so I can
12 hear how this relates to the cross. I don't recall any
13 testimony about a comparison between Imperial and San Diego
14 with respect to lot size, weather, evaporation.

15 MR. ROSSMANN: Your Honor, I believe Mr. Slater asked
16 some questions that seemed to be laying the foundation for,
17 if you will, questioning the efficiency of water use in
18 Imperial Valley in response to our direct case of what our
19 future water needs would be. This is a familiar line of
20 questioning to me, and so I just wanted to lay the
21 foundation for different factual distinctions that would
22 explain perhaps a higher per capita use in Imperial Valley
23 as compared to San Diego.

24 CHAIRMAN BAGGETT: I will overrule.

25 Continue.

1 MR. ROSSMANN: I think counsel's point may be well
2 taken, but Los Angeles did this all the time to the Owens
3 Valley.

4 Multifamily dwellings, is there a higher prevalence of
5 those in San Diego than Imperial County?

6 MR. HEUBERGER: Yes.

7 MR. ROSSMANN: People in Imperial County rather take
8 pride in their lawns and vegetation in the residential
9 neighborhoods; is that correct?

10 MR. HEUBERGER: For the most part, yes.

11 MR. ROSSMANN: They find that a relief from living in
12 an otherwise desert environment?

13 MR. HEUBERGER: Yes.

14 MR. ROSSMANN: How about future land use patterns in
15 Imperial County, do you anticipate for the next 20 years
16 that they'll largely be similar to what we see there now?

17 MR. HEUBERGER: As far as urban land development? Yes.

18 MR. ROSSMANN: Your answer is yes?

19 MR. HEUBERGER: Yes.

20 MR. ROSSMANN: Finally, the questions, the most recent
21 questions, about the policy of the Board of Supervisors. I
22 believe you testified that at one point the Imperial County
23 Board of Supervisors had taken a position against following
24 in this transfer?

25 MR. HEUBERGER: Yes. That was the previous Board of

1 Supervisors, not the current.

2 MR. ROSSMANN: That was before November 1998 when the
3 transfer agreement was formulated; is that correct?

4 MR. HEUBERGER: I believe it was in 1998 or right
5 before that.

6 MR. ROSSMANN: Early in 1998?

7 MR. HEUBERGER: Yes.

8 MR. ROSSMANN: You and I worked on that position paper?

9 MR. HEUBERGER: Yes.

10 MR. ROSSMANN: The final proposals that came out from
11 the two entities contained a no following provision; is that
12 correct?

13 MR. HEUBERGER: I believe so.

14 MR. ROSSMANN: When the present Board of Supervisors
15 was asked by members of the community to take a no following
16 position earlier this year or late last year, what was the
17 response of the Board of Supervisors to that request?

18 MR. HEUBERGER: I think the Board has been supportive
19 of no following concept.

20 MR. ROSSMANN: But they didn't take a categorical
21 position against it?

22 MR. HEUBERGER: No, they didn't.

23 MR. ROSSMANN: In fact, the position that Supervisor
24 Kuiper, Board Chair Kuiper, presented in Holtville left open
25 the possibility that forces beyond those within the County's

1 control imposed a fallowing component that the Board would
2 have to deal with that issue at that time?

3 MR. HEUBERGER: That's correct.

4 MR. ROSSMANN: Mr. Spickard, there was testimony or
5 questioning yesterday asking you to define beneficiaries of
6 the transfer agreement that we are not dealing with.

7 MR. SPICKARD: Yes.

8 MR. ROSSMANN: I believe in your view the San Diego
9 County Water Authority and its consumers ranked as, if you
10 will, one example of beneficiaries.

11 MR. SPICKARD: Absolutely.

12 MR. ROSSMANN: I was reviewing -- I will represent that
13 in reviewing Mr. Osias' opening statement on April 30th, he
14 described other beneficiaries such as Metropolitan and
15 Coachella, who might now be able to realize either a more
16 secure source of water or surplus water from the Colorado
17 River for the next 15 years.

18 Would both of those entities fall within the category
19 of beneficiaries?

20 MR. SPICKARD: I think those are benefiting, yes.

21 MR. ROSSMANN: And if the environment of California
22 benefited from a project, in a sense the people through the
23 Legislature would also qualify as beneficiaries, might they
24 not?

25 MR. SPICKARD: I would think so just by virtue of

1 having a plan that gets California within its overall
2 federal cap seems to be a benefit to the people of
3 California.

4 MR. ROSSMANN: We also heard testimony that the Salton
5 Sea and its wildlife were of national significance. And if
6 somehow that resource could be protected or even enhanced,
7 that would be a nationwide benefit, would it not?

8 MR. SPICKARD: Assuming that the testimony about it
9 being of a national significance is correct, that is
10 something I couldn't judge myself, but, yes, that certainly
11 logically follows.

12 MR. ROSSMANN: I wasn't asking you to confirm that
13 testimony. I was asking you to make that assumption. It
14 would not be inappropriate in those circumstances for the
15 Congress of the United States to contribute resources to
16 account for that beneficial effect?

17 MR. SPICKARD: That would make sense, too.

18 MR. ROSSMANN: But to date, in your assessment of the
19 decisions that are proposed, there is no accounting to
20 compensate for any loss to either environmental values or
21 so-called third party impacts within the Imperial Valley; is
22 that right?

23 MR. SPICKARD: Yeah. If you mean there are no
24 estimated mitigation measures in the EIR, that is correct.

25 MR. ROSSMANN: There are no mitigation measures and

1 there are no mechanisms in place to carry out such
2 compensation even if it were proposed?

3 MR. SPICKARD: That's correct.

4 MR. ROSSMANN: We've had a bit of a questioning about
5 the \$50 base price for water to the Coachella Valley Water
6 District under the terms of either the transfer agreement or
7 the larger QSA. Do you recall the questions?

8 MR. SPICKARD: Yes.

9 MR. ROSSMANN: Is it your understanding that \$50 forms
10 the sole consideration -- well, let me rephrase that
11 question.

12 Might a \$50 price not reflect other consideration that
13 the Imperial Irrigation District received for making the
14 transfer of water at that relatively low price?

15 MR. SPICKARD: I would assume there is something else
16 involved in there because it is clearly a relatively low
17 price. In a market system you would say that's a below
18 market price, but I don't believe we are in a market system
19 here.

20 MR. ROSSMANN: Let's explore that line for just a
21 little longer. In these proceedings neither the
22 Metropolitan Water District nor the Coachella Valley Water
23 District has participated as an active protestant. So the
24 fact that the Imperial Irrigation District has not faced
25 hostile cross-examination from those two parties, that might

1 be worth something to the Imperial Irrigation District?

2 MR. SPICKARD: I would certainly think so.

3 MR. ROSSMANN: In fact, in your own personal terms it
4 might be worth a few dollars an acre-foot not to have to
5 face their cross-examination?

6 MR. SPICKARD: That's right.

7 MR. ROSSMANN: Especially if I represent that they're
8 represented by some of the best water lawyers in California.

9 MR. SPICKARD: Okay.

10 MR. ROSSMANN: Mr. Slater pointed out that the market
11 included for San Diego groundwater that could be transferred
12 at approximately \$225 an acre-foot. I am not asking you to
13 assume that that is true. I am asking you to assume that is
14 an availability.

15 MR. SPICKARD: I heard them use those terms.

16 MR. ROSSMANN: The base price for the transfer here is
17 \$250 an acre-foot?

18 MR. SPICKARD: Correct.

19 MR. ROSSMANN: That price does not include mitigation
20 of socioeconomic impacts in the Imperial Valley; is that
21 correct?

22 MR. SPICKARD: Right.

23 MR. ROSSMANN: Does not include mitigation or avoidance
24 of impacts to wildlife or other public trust values of the
25 Salton Sea; is that correct?

1 MR. SPICKARD: Right.

2 MR. ROSSMANN: So, again, in an economic sense if we
3 are operating in a free market, would it not be the rational
4 decision for San Diego to pursue that groundwater rather
5 than this transfer?

6 MR. SPICKARD: Absolutely. The rational economic
7 decision would be to go with, for a commodity, to go with
8 the lowest price for that same quality and quantity of
9 goods.

10 MR. ROSSMANN: That might be an attractive choice
11 especially if there were no other Metropolitan Water
12 District supplies available to San Diego?

13 MR. SPICKARD: Right. Again, when I say for a
14 commodity the same quantity and quality, that means implying
15 that you could get 200,000 acre-foot a year out of the
16 groundwater source.

17 MR. ROSSMANN: That leads to the inference that the
18 transfer is of greater value to San Diego because of both
19 the asserted reliability of the water; is that true?

20 MR. SPICKARD: I would think so. Just from what I know
21 of Orange County, I don't imagine that they have so much
22 groundwater that they could provide all of San Diego's needs
23 as well as their own. I would think that San Diego would
24 find Colorado River water to be a more reliable source.

25 MR. ROSSMANN: And without asking you to master the

1 law of the river, that no one else could claim to have done,
2 is it not the case that the water that is being transferred
3 is among the higher priorities on the Colorado River?

4 MR. SPICKARD: That is what I understand.

5 MR. ROSSMANN: Higher than Metropolitan's priority?

6 MR. SPICKARD: That's correct.

7 MR. ROSSMANN: Your Honor, that completes our redirect
8 examination.

9 CHAIRMAN BAGGETT: Recross.

10 Mr. Gilbert.

11 MR. GILBERT: No.

12 CHAIRMAN BAGGETT: Mr. Du Bois.

13 MR. DU BOIS: No.

14 CHAIRMAN BAGGETT: Mr. Rodegerdts.

15 MR. RODEGERDTS: No.

16 CHAIRMAN BAGGETT: Mr. Fletcher.

17 MR. FLETCHER: Nothing.

18 CHAIRMAN BAGGETT: Ms. Douglas.

19 MS. DOUGLAS: Nothing.

20 CHAIRMAN BAGGETT: Authority.

21 MR. HARGREAVES: I have one rather quick question.

22 ----oOo----

23 //

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECROSS-EXAMINATION OF COUNTY OF IMPERIAL

BY THE SALTON SEA AUTHORITY

BY MR. HARGREAVES

MR. HARGREAVES: Good morning.

I just put before Mr. Heuberger, it's a copy of Exhibit 55. It is the transfer EIR/EIS, and I believe I opened it to Page 147.

Is that correct?

MR. ROSSMANN: Sir, I think it is 1-47. These EIRs have a unique pagination.

MR. HARGREAVES: On that page there is a listing of responsible agencies under the EIR; is they're not?

MR. HEUBERGER: Yes.

MR. HARGREAVES: Is Imperial Valley listed as a responsible agency?

MR. HEUBERGER: Imperial County is not.

MR. HARGREAVES: By the way, is the State Water Resources Control Board listed as a responsible agency?

MR. HEUBERGER: Yes.

MR. HARGREAVES: It is?

MR. HEUBERGER: SWRC, State Water Resources Control Board.

MR. HARGREAVES: Is it your understanding that a responsible agency is going to be required to rely on the CEQA documents certified by the lead agency?

1 MR. HEUBERGER: I'm sorry, restate that.

2 MR. HARGREAVES: Is it your understanding that a
3 responsible agency is required to rely on the CEQA analysis
4 prepared by the lead agency?

5 MR. HEUBERGER: I would think we have to consider it.
6 We don't necessarily have to agree.

7 MR. HARGREAVES: Isn't it the case that if a lead
8 agency determines under a particular circumstance that there
9 is going to be no significant impact, that the responsible
10 agency is required to abide by that determination?

11 MR. HEUBERGER: My understanding is that we could
12 litigate it if we didn't.

13 MR. HARGREAVES: That would be choice. If you don't
14 agree with it, then you could litigate it. But if you don't
15 litigate it, you are stuck with it?

16 MR. HEUBERGER: Yes.

17 MR. HARGREAVES: No further questions.

18 CHAIRMAN BAGGETT: Mr. Shepard.

19 MR. SHEPARD: No, thank you.

20 CHAIRMAN BAGGETT: Mr. Slater.

21 ----oOo----

22 RECROSS-EXAMINATION OF COUNTY OF IMPERIAL

23 BY SAN DIEGO COUNTY WATER AUTHORITY

24 BY MR. SLATER

25 MR. SLATER: Good morning.

1 MR. SPICKARD: Morning.

2 MR. SLATER: My questions are for Mr. Spickard.

3 In your redirect in response to questions from
4 Mr. Rossmann, you were discussing a price under the San
5 Diego/IID transfer, correct?

6 MR. SPICKARD: Correct.

7 MR. SLATER: You gave some responses regarding what
8 might impact price, correct?

9 MR. SPICKARD: Right.

10 MR. SLATER: And it is true, isn't it, that there are
11 many variables that can affect what a price ought to be
12 between a willing buyer and a willing seller, right?

13 MR. SPICKARD: Certainly.

14 MR. SLATER: You would think reliability is one
15 important factor, correct?

16 MR. SPICKARD: Yes.

17 MR. SLATER: Quality of the water might be another,
18 correct?

19 MR. SPICKARD: Correct.

20 MR. SLATER: Cost of transporting the water from point
21 A to point B might be important as well, correct?

22 MR. SPICKARD: Very much.

23 MR. SLATER: With regard to quality, do you have any
24 knowledge of the difference in quality of water of Colorado
25 River water versus water in the State Water Project?

1 MR. SPICKARD: The only knowledge I have is I heard
2 people refer to that northern water as sweet water and
3 seemed to imply that there is a higher salt content in the
4 Colorado River water. But I don't know anything further
5 than that.

6 MR. SLATER: Do you have any knowledge about cost of
7 treatment related to the level of TDS or salt in the water?

8 MR. SPICKARD: No, I do not.

9 MR. SLATER: Would you be surprised to know that the
10 magnitude of difference in cost of treatment is three or
11 four times as much?

12 MR. ROSSMANN: Just, your Honor --

13 MR. SLATER: I'll strike that.

14 In addition to comparable sales, there are other ways
15 in which a supply can be valued, correct?

16 MR. SPICKARD: Yes.

17 MR. SLATER: One of those we mentioned or you mentioned
18 previously was alternative, correct?

19 MR. SPICKARD: Correct.

20 MR. SLATER: And we mentioned that the Metropolitan
21 water district supply is an alternative source that might be
22 available to San Diego, correct?

23 MR. SPICKARD: I would assume so, yes.

24 MR. SLATER: Therefore, their pricing structure would
25 have some relevance in deciding what a fair price was, right?

1 MR. SPICKARD: Right.

2 MR. SLATER: Now, are you aware that the transfer
3 agreement between IID and San Diego requires that IID
4 produce a minimum of 130,000 acre-feet through on-farm
5 conservation?

6 MR. SPICKARD: I guess I've been -- realized this
7 morning that I do not know the specific details of the
8 agreement. I have heard that 130,000 number a variety of
9 times.

10 MR. SLATER: I'm going to ask you to assume for a
11 second that the IID/San Diego transfer agreement requires
12 that if there is going to be a transfer to San Diego that a
13 minimum of 130,000 acre-feet must be made available through
14 on-farm conservation. Assume that.

15 MR. SPICKARD: Okay.

16 MR. SLATER: And secondly, assume the start price in
17 that agreement is, as you presumed in your testimony, at
18 \$250 per acre-foot.

19 Do you have an opinion -- sorry. Your testimony was in
20 relationship to the initial start price, your testimony was
21 that that price didn't take into account potential
22 socioeconomic impacts, correct?

23 MR. SPICKARD: I think the idea was that there was no
24 premium added to that price for socioeconomic impacts at
25 this point, whether or not you are going to use some of that

1 to pay socioeconomic mitigation is a decision that would
2 have to be made, I assume, by IID Board.

3 MR. SLATER: Is it your assumption there would be
4 adverse socioeconomic impacts if there was on-farm
5 conservation employed?

6 MR. SPICKARD: By on-farm conservation you mean by
7 means other than fallowing?

8 MR. SLATER: Yes, I do.

9 MR. SPICKARD: My understanding is that if you are
10 doing on-farm conservation and using at least the tailwater
11 recovery systems as a benchmark technology that there would
12 be positive socioeconomic impacts in a sense of stimulated
13 more employment and more investment in the Imperial Valley.

14 MR. SLATER: It would be a fair assumption, then, would
15 it not, that a \$250 presumed start price, which presumed
16 also or assumed on-farm conservation, would have minimal or
17 positive socioeconomic impacts, correct?

18 MR. SPICKARD: Correct.

19 MR. SLATER: I think that is it.

20 Thank you.

21 CHAIRMAN BAGGETT: Thank you.

22 Mr. Osias.

23 ----oOo----

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECROSS-EXAMINATION OF COUNTY OF IMPERIAL
BY IMPERIAL IRRIGATION DISTRICT
BY MR. OSIAS

MR. OSIAS: Mr. Heuberger, the County submitted 18 pages of single-paged comments to the transfer EIR/EIS, correct?

MR. HEUBERGER: Sounds about right.

MR. OSIAS: They attached five pages of additional single-spaced comments in Attachment B and four pages of additional singled-spaced comments in Attachment B, correct?

MR. HEUBERGER: Yes.

MR. OSIAS: All were incorporated as comments of the County?

MR. HEUBERGER: Correct.

MR. OSIAS: Nowhere in those 27 pages of singled-spaced comments did the County object to not being listed as a responsible agency, did they?

MR. HEUBERGER: We've had that discussion with your agency many times over the years, and it seemed pointless, given the answers we got.

MR. OSIAS: So because of the history of frustration, you did not submit that comment in these 27 pages, correct?

MR. HEUBERGER: Based on your answers, yes.

MR. OSIAS: I am asking you the questions. Did you or

1 did you not object or submit a comment about not being
2 listed as a responsible agency? Did you or did you not?

3 MR. HEUBERGER: I'm sorry?

4 MR. OSIAS: Did you or did you not submit a comment
5 that you should have been listed as a responsible agency?

6 MR. HEUBERGER: Not as responsible agency, yeah.

7 MR. OSIAS: In preparing this response you were
8 assisted by county counsel, correct?

9 MR. HEUBERGER: Yes.

10 MR. OSIAS: You were also assisted by outside counsel,
11 right?

12 MR. HEUBERGER: Yes.

13 MR. OSIAS: It's your opinion that both outside counsel
14 and county counsel are very experienced CEQA lawyers,
15 correct?

16 MR. HEUBERGER: Yes.

17 MR. OSIAS: Did you suggest to Mr. Rossmann that you
18 didn't have a copy of the IID/San Diego transfer agreement?

19 MR. HEUBERGER: Did I suggest to Mr. Rossmann I didn't
20 have the agreement?

21 MR. OSIAS: Yes.

22 MR. HEUBERGER: No, I don't believe -- I don't believe
23 I did.

24 MR. OSIAS: You do have it?

25 MR. HEUBERGER: Now I do, yes.

1 MR. OSIAS: Maybe I didn't hear right. Did you suggest
2 that you didn't have it in a timely fashion for purposes of
3 preparing for testimony at the State Board?

4 MR. HEUBERGER: No.

5 MR. OSIAS: You didn't suggest that either?

6 MR. HEUBERGER: No.

7 MR. OSIAS: You had it well in advance of the State
8 Board preparation?

9 MR. HEUBERGER: I had it in advance of State Board
10 testimony.

11 MR. OSIAS: You could have made it available to Mr.
12 Spickard?

13 MR. HEUBERGER: Yes.

14 MR. OSIAS: But you didn't?

15 MR. HEUBERGER: I don't recall whether we did or
16 didn't. We submitted a lot of documents.

17 MR. OSIAS: The questioning about not having your
18 request for documents from Imperial timely provided at least
19 didn't include the transfer agreement as it relates to the
20 State Board proceeding; is that correct?

21 MR. HEUBERGER: I'm sorry, I don't understand your
22 question.

23 MR. OSIAS: I thought Mr. Rossmann elicited from you
24 some frustration or something like that with respect to
25 being kept informed about the terms of the transfer

1 agreement. Did I mishear you?

2 MR. HEUBERGER: I thought I stated that we had
3 repeatedly asked for documents from the IID and had not
4 received many of them in time or at all.

5 MR. OSIAS: That doesn't include the transfer
6 agreement, right?

7 MR. HEUBERGER: It originally, yes. We did ask for
8 copies originally and didn't receive them until we asked
9 many times after that.

10 MR. OSIAS: When did you first get a copy of --

11 MR. HEUBERGER: I don't recall.

12 MR. OSIAS: It was not year 2002, was it?

13 MR. HEUBERGER: I said I don't recall the date.

14 MR. OSIAS: You don't recall the year?

15 MR. HEUBERGER: The year is part of the date. I don't
16 recall.

17 MR. OSIAS: It might have been 1998?

18 MR. HEUBERGER: No.

19 MR. OSIAS: It was not 1998?

20 You have to answer out loud.

21 MR. HEUBERGER: I don't recall the date, but I don't
22 believe we received it in 1998, no.

23 MR. OSIAS: Are you aware that Imperial Irrigation
24 District has a website?

25 MR. HEUBERGER: Yes.

1 MR. OSIAS: When was the last time you looked at it?

2 MR. HEUBERGER: It's been some time.

3 MR. OSIAS: Do you know if the agreement is on the
4 website?

5 MR. HEUBERGER: No, I don't.

6 MR. OSIAS: Thank you.

7 CHAIRMAN BAGGETT: Thank you.

8 MR. ROSSMANN: Your Honor, I do have two very quick
9 questions. I'd almost do it from here, but let me get over
10 there.

11 CHAIRMAN BAGGETT: You have redirect?

12 MR. ROSSMANN: Some new things came up.

13 CHAIRMAN BAGGETT: That is?

14 MR. ROSSMANN: I think it was the counsel for Salton
15 Sea asked him to look at the EIR and pointed out that
16 Imperial County was not listed as a responsible agency, and
17 then Mr. Osias just made the point that we didn't put that
18 in our comments. I do feel that there is more testimony to
19 come out on that that is relevant.

20 CHAIRMAN BAGGETT: You have rebuttal, that is all I can
21 say. I was amazed that no one objected to some -- I should
22 have probably objected myself to the cross and recross that
23 wasn't going to --

24 MR. ROSSMANN: If I could ask two questions, and then
25 he doesn't have to come back. And just offer of proof that

1 the County of Imperial in commenting on the scope --

2 CHAIRMAN BAGGETT: Let me see if there is an objection.

3 MR. OSIAS: I'm not sure what he is offering. He wants
4 to examine further on the subject of comments?

5 CHAIRMAN BAGGETT: These are very simple --

6 MR. ROSSMANN: I just want to establish that the County
7 of Imperial in the scoping phase asked to be considered a
8 responsible agency under its EIR.

9 MR. OSIAS: I have no objection.

10 CHAIRMAN BAGGETT: I would for efficiency --

11 ---oOo---

12 FURTHER REDIRECT EXAMINATION OF COUNTY OF IMPERIAL

13 BY MR. ROSSMANN

14 MR. ROSSMANN: That is the one question I'll ask Mr.
15 Heuberger.

16 Mr. Heuberger, during the scoping process, did the
17 County of Imperial request that it be considered as a
18 responsible agency under its EIR?

19 MR. HEUBERGER: Yes.

20 MR. ROSSMANN: Was that request granted?

21 MR. HEUBERGER: No.

22 MR. ROSSMANN: Thank you.

23 CHAIRMAN BAGGETT: Thank you.

24 Any other recross on that?

25 Would you like to enter --

1 participants for their willingness to be flexible with the
2 scheduling over the past couple of weeks. I really
3 appreciate it.

4 CRIT will begin with an opening statement, then offer
5 testimony of Charles Land, wildlife manager for the Colorado
6 River Indian Tribes, Department of Fish and Game. Tribal
7 Councilmember Dennis Patch, who was one of our listed
8 witnesses, hoped to be here today, but his duties as a
9 Tribal Councilmember have kept him in Parker.

10 I would like to begin with an overview of why CRIT is
11 here and who we are and what I would like the Board to
12 decide.

13 As a sovereign and federally recognized Indian nation,
14 CRIT has a government to government relationship with the
15 United States government, the federal government. It is not
16 a government to government relationship with state
17 governments. Therefore, CRIT does not generally appear
18 before state boards or state proceedings. However, the
19 Tribes believed this issue was important for the Board on
20 this issue for the Board to hear its concerns before
21 deciding whether or not to approve the proposed transfer.
22 For that reason, CRIT also supports the request of the
23 petitioners that the outcome of this proceeding have no
24 precedential effect as to the applicability or
25 nonapplicability of California law to any other Colorado

1 River water transfers or acquisitions.

2 The Colorado River Indian Reservation was established
3 in 1865 for the Indians of said river and its tributaries.
4 Reservation lands include, as you can see on CRIT Exhibit 10
5 -- the margin is off the screen. The Reservation includes
6 portions of California and Arizona. The Reservation itself
7 is a small portion of the aboriginal homelands of the Mohave
8 people. In 1942, lured by promises of irrigated land
9 allotments, Hopis and Navajos were encouraged to move from
10 their aboriginal lands in northwestern Arizona to the
11 Reservation. Chemehuevis were later relocated to the
12 Reservation after the construction of Parker Dam and the
13 flooding of their reservation to create Lake Havasu.

14 Reservation lands include 225,995 acres in Arizona and
15 42,696 acres in California. Tribal lands are low and arid
16 desert, river bottom with abrupt mountain ranges. The
17 Colorado River provides approximately 90 miles of shoreline,
18 running north to south along the Reservation. The river
19 corridor, adjacent wetlands and riparian areas of the
20 Reservation serve as habitat for hundreds of species of
21 flora and fauna, including several that have been listed as
22 threatened or endangered pursuant to the federal Endangered
23 Species Act.

24 The Tribes' economic interests, agriculture,
25 recreation, small businesses and homesite leases, are bound

1 by the accessibility of water.

2 Throughout the history of the Tribes, the river has
3 been the center of their existence, providing them with
4 everything they needed for their livelihood. The native
5 plants, including the mesquite, cottonwood and willow,
6 provide the Tribes with fuel, food, materials to make
7 shelter, baskets, tools, medicine, clothing, even paints and
8 dyes. Valued from birth to death, wood from the mesquite
9 tree is used throughout life and for cremation ceremonies
10 after death. The entire way of life of the Mohave people
11 depends upon the utilization and care of the resources
12 available in the Colorado River and the desert environment.
13 It is vitally important those resources be preserved for
14 future generations.

15 Since white settlement, dams, agriculture and the
16 introduction of exotic plant species have forever altered
17 the Lower Colorado River ecosystems and traditional ways of
18 life that depended upon the river. Dams have restricted the
19 life-giving floods that deposited soil on the land. Levees
20 now control the river and cut off historic wetlands and
21 sloughs from seasonal floods necessary for their survival.
22 Agricultural and exotic plants have replaced mesquite
23 bosques and gallery forests. Backwaters, beaches and
24 forests that were cherished by the Tribes for hunting and
25 recreation and homesites have been diminished and

1 deteriorated. In less than a hundred years the Colorado
2 River has been transformed from a wild, meandering river
3 into something resembling the West's largest irrigation
4 canal.

5 Throughout history the Mohave people have considered
6 themselves conservationists. Even the name Mohave comes
7 from translations of Hamakav or Aha Macav, which refers to
8 the water of the Colorado River. The Colorado River Indian
9 Tribes have carried on this tradition and the preservation
10 and conservation of culture, and native lands are at the
11 forefront of the CRIT way of life. One example of Tribes'
12 endeavors is the creation of the Ahakhav Tribal Preserve in
13 1995.

14 This is CRIT 11.

15 The area above the preserve. The preserve currently
16 totals about 1,200 acres with an additional 13,800 acres
17 either under development or earmarked for future projects.
18 The Ahakhav Preserve has completed and has ongoing
19 revegetation projects which total approximately 460 acres
20 and consist of more than 29,000 trees. The variety of plant
21 species incorporated into conservation and revegetation
22 programs include cottonwood, honey mesquite, Chilean
23 mesquite, screwbean mesquite, wolfberry, quail bush, gooding
24 willow, sandbar willow, desert willow, Palo Verde, cats claw
25 and ironwood. Each of those species is both an important

1 biological and cultural resource for the Tribes.

2 What do we want? According to the environmental review
3 documents prepared by the Bureau of Reclamation and Imperial
4 Irrigation District, the proposed transfer and its related
5 federal projects will reduce Colorado River flows through
6 the reservation, which will impact our biological and
7 cultural resources.

8 While mitigation for these projects have been proposed
9 in the environmental review documents, those same documents
10 leave many questions unanswered, such as who will pay for
11 the mitigation and where will the mitigation be implemented,
12 and who will be responsible for ensuring the mitigation is
13 adequate. Moreover, due to the lack of tribal consultation,
14 CRIT finds the environmental review documents to be
15 inadequate.

16 Given the significance of the unanswered questions and
17 the importance of the impacted biological resources to the
18 Tribes culture, CRIT believes the impact of the proposed
19 transfer on biological resources is unreasonable. CRIT,
20 therefore, opposes the transfer until there has been a
21 complete analysis of the impacts of the transfer on our
22 biological cultural resources.

23 If the Board approves the transfer, the Colorado River
24 Indian Tribes request that any such approval be contingent
25 upon full mitigation of the projected biological impacts and

1 the establishment of a monitoring program which includes the
2 Tribes for the life of the transfer.

3 Thank you.

4 CRIT would like to call its first witness, Charles
5 Land.

6 CHAIRMAN BAGGETT: Was your witness sworn?

7 MR. SHEPARD: He was on the very first day of Phase
8 II.

9 ---oOo---

10 DIRECT EXAMINATION OF COLORADO RIVER INDIAN TRIBES

11 BY MR. SHEPARD

12 MR. SHEPARD: Could you state your full name and spell
13 your last name for the record?

14 MR. LAND: Charles Land, L-a-n-d.

15 MR. SHEPARD: What is your present position with the
16 Colorado Indian River Tribes?

17 MR. LAND: I am the wildlife manager for the Colorado
18 Indian River Tribes.

19 MR. SHEPARD: Would you describe your responsibility as
20 a wildlife manager?

21 MR. LAND: I manage the wildlife. I conduct biological
22 research and surveys. I oversee certain habitat restoration
23 projects, and I provide consultation for the Tribes on
24 issues that affect biological resources and including
25 endangered species, cooperation with various programs and

1 consult with them with regard to the impacts of such
2 federal actions as this water diversion and how that will
3 affect our biological resources.

4 MR. SHEPARD: Do you have a document identified as CRIT
5 17 in front of you?

6 MR. LAND: Yes, I do.

7 MR. SHEPARD: Could you please describe the document?

8 MR. LAND: This is my written testimony.

9 MR. SHEPARD: Have you had opportunity to review that
10 testimony recently?

11 MR. LAND: Yes, I have.

12 MR. SHEPARD: Do you wish to make any changes?

13 MR. LAND: No.

14 MR. SHEPARD: Is your testimony a true and accurate
15 statement?

16 MR. LAND: Yes.

17 MR. SHEPARD: Mr. Land, will the proposed transfer
18 impact the biological cultural resources of CRIT?

19 MR. LAND: Yes, it will.

20 MR. SHEPARD: According to the Draft Environmental
21 Impact Statement that you have next to you, the DEIR/DEIS
22 that was prepared by CH2MHill, what would those impacts be?

23 MR. LAND: The impacts will include impacts on
24 cottonwood-willow habitat, reduction of acreage of open
25 water and impacts on emergent vegetation.

1 MR. SHEPARD Do you agree with those basic sorts of
2 impacts?

3 MR. LAND: The basic sorts of impacts, yes.

4 MR. SHEPARD: Do you think the impacts have been -- in
5 your opinion, have the impacts of the proposed transfer been
6 fully identified?

7 MR. LAND: Not in my opinion.

8 MR. SHEPARD: What information would need to be
9 developed in order to ensure the biological impacts of the
10 proposed transfer are fully identified and considered?

11 MR. LAND: The maximum payback amount for the
12 inadvertent -- under the Inadvertent Overrun Policy Should
13 be included in the modeling for this document. There seems
14 to be a strong possibility that inadvertent overruns would
15 occur, and, therefore, they should be included in the
16 modeling of impacts.

17 The Tribes believe that the frequency, duration and
18 timing of the reductions in river level should be included.
19 These can be very important issues with regard to things
20 like fish spawning, the ability of cottonwood/willow to
21 propagate to germinate and other related issues.

22 Furthermore, we, CRIT, believes that the groundwater
23 should be mapped in order to fully identify what impacts or
24 reduction in groundwater level would have on the
25 cottonwood/willow and backwater habitat and also on proposed

1 mitigation sites, on their viability as mitigation or
2 revegetation, excuse me, their viability as revegetation
3 states.

4 MR. SHEPARD: Could you briefly describe the habitat
5 conservation and restoration projects of the Tribes?

6 MR. LAND: Yes. The principal project is the Ahakhav
7 Tribal Preserve. This involves preservation of native
8 species habitat and restoration of native species habitat.
9 The restored areas include mesquite, cottonwood and willow
10 that are the native species of the Lower Colorado River
11 Valley. The Achii Hanyo Wildlife Preserve is another
12 restoration project. In this instance we are converting a
13 former and disused fish production facility into wetlands.
14 Wetlands are one of the habitat types that have been greatly
15 reduced over the years in the Lower Colorado River Valley.
16 The focus of this preserve is waterfowl and native species
17 habitat.

18 In addition to these, there are other areas where CRIT
19 has revegetated burn areas through the cooperation of the
20 Bureau of Indian Affairs. And those areas also are
21 revegetated with a combination of mesquite and
22 cottonwood/willow, depending on soil and water conditions.

23 MR. SHEPARD: Do you know why CRIT undertook those
24 projects?

25 MR. LAND: CRIT believes that it has a responsibility

1 to preserve the habitat that is the heritage of its people
2 and to participate in larger programs that are seeking to
3 preserve the ecological integrity and preserve habitat for
4 endangered species in the Lower Colorado River.

5 MR. SHEPARD: In your opinion will the proposed
6 transfer impact some of these habitat conservation projects?

7 MR. LAND: Yes, in my opinion.

8 MR. SHEPARD: In what way?

9 MR. LAND: The proposed action can lower groundwater
10 levels. It is essentially certain to some extent. Lowering
11 the groundwater levels has the potential to cause direct
12 mortality of cottonwood/willow habitat. They can cause
13 sudden, optimal conditions for that cottonwood/willow
14 habitat that would impair its health and viability to
15 continue as cottonwood/willow. They reduce the potential
16 for endangered species to utilize that habitat. The willow
17 flycatcher, for example, requires -- seems to require a
18 moist soil component to its habitats, and the reduction of
19 emergent vegetation also will reduce habitat that has the
20 potential to be used by endangered species.

21 MR. SHEPARD: Are you familiar with the habitat
22 conservation measures for cottonwood/willow habitat in
23 backwater habitat that is proposed in the Draft EIR/EIS
24 document?

25 MR. LAND: Yes, I am.

1 MR. SHEPARD: Do you have concerns about those?

2 MR. LAND: Yes, I do. The concerns are that the Tribes
3 believe that these are primarily based on projections of
4 what the impacts will be by the proposed change. The
5 Colorado River is a highly unpredictable and variable river
6 system. They would be extremely difficult to consider all
7 the variables that might impact biological resources. The
8 CRIT believes that the -- I lost my train of thought for a
9 moment.

10 MR. SHEPARD: What are the -- you were discussing
11 CRIT's concern about the proposed habitat conversation
12 measures.

13 MR. LAND: Yes. CRIT doesn't or CRIT believes that the
14 criteria for choosing mitigation sites haven't been
15 specified. That -- who actually pays for these mitigation
16 sites is also in question. And that CRIT has other concerns
17 with regard to these matters.

18 Let me just glance at my notes a moment.

19 MR. SHEPARD: Mr. Land, I can ask you a follow-up
20 question to that. In your opinion, is long-term monitoring
21 important of the proposed biological impacts of the proposed
22 transfer?

23 MR. LAND: Yes, it is that. That is the point I was
24 going to bring up. Because a diversion of this size has
25 rarely been attempted, we don't really know what those

1 impacts will be. We, CRIT, believes that a long-term
2 monitoring is essential to establish that the mitigation
3 procedures are sufficient and that the impacts won't be
4 greater than have been projected.

5 MR. SHEPARD: Thank you.

6 Does the Draft Environmental Impact Statement suggest
7 which agency would be responsible for ensuring the habitat
8 conservation measures are implemented?

9 MR. LAND: The Environmental Impact Statement refers to
10 an earlier developed biological opinion, that was developed
11 by the U.S. Fish and Wildlife Service. In that document it
12 is my understanding that the Bureau of Reclamation will be
13 responsible.

14 MR. SHEPARD: To your knowledge has the Fish and
15 Wildlife Service ever consulted with the Tribes regarding
16 the adequacy of those proposed conservation measures?

17 MR. LAND: No.

18 MR. SHEPARD: BOR, Bureau of Reclamation, have they
19 consulted with the Tribes regarding the adequacy of those
20 conservation measures?

21 MR. LAND: No.

22 MR. SHEPARD: Have they consulted with the Tribes
23 regarding the location of those conservation measures?

24 MR. LAND: No, they have not.

25 MR. SHEPARD: To your knowledge, has IID, Imperial

1 Irrigation District, consulted with the Tribes about
2 conservation measures?

3 MR. LAND: No.

4 MR. SHEPARD: San Diego County Water Authority?

5 MR. LAND: No.

6 MR. SHEPARD: Mr. Land, were you present in the hearing
7 for the testimony of Dr. Eckhart and Ms. Harnish from
8 CH2MHill?

9 MR. LAND: Yes, I was.

10 MR. SHEPARD: Do you recall Dr. Eckhart's testimony
11 regarding implementation habitat conservation measures in
12 the DEIR/DEIS?

13 MR. LAND: I believe that he stated that the BOR would
14 be responsible.

15 MR. SHEPARD: Did he say the MSCP would be responsible
16 as well?

17 MR. LAND: Yes, that is the case.

18 MR. SHEPARD: Were you present at the hearing for the
19 testimony of Lawrence Purcell of San Diego County Water
20 Authority?

21 MR. LAND: Yes, I was.

22 MR. SHEPARD: Do you recall who Mr. Purcell believed
23 would implement the habitat conservation measures?

24 MR. LAND: I think there was some question as who would
25 actually implement it.

1 CROSS-EXAMINATION OF COLORADO RIVER INDIAN TRIBES

2 BY PLANNING AND CONSERVATION LEAGUE

3 BY MS. DOUGLAS

4 MS. DOUGLAS: Mr. Land, I understand from Mr. Shepard's
5 opening statement that the Tribes have about 90 miles of
6 shoreline of Colorado River?

7 MR. LAND: Yes, that is correct.

8 MS. DOUGLAS: And in those 90 miles of shoreline do you
9 have a lot of cottonwood/willow habitat?

10 MR. LAND: Yes, there are significant acreage.

11 MS. DOUGLAS: Do you expect that this acreage could be
12 -- you do expect, I understand, that this acreage could be
13 impacted by the proposed transfer?

14 MR. LAND: Yes.

15 MS. DOUGLAS: Now, from your testimony, which is
16 written testimony, CRIT Exhibit 17, you sort of go through
17 some of the projected impacts that are identified in the
18 EIR/EIS. And there is one that you point out is a reduction
19 in area of open water and emergent vegetation.

20 Can you explain how that would happen and what kind of
21 impact that would have?

22 MR. LAND: By lowering the river level you will reduce
23 the acreage of open water and of emergent vegetation. That
24 would be the main cause of the impacts. You would, of
25 course, be lowering groundwater level. By lowering these

1 river levels you will reduce the areas that are suitable for
2 native species.

3 MS. DOUGLAS: What would be the impact of reducing --
4 you are talking about plant species?

5 MR. LAND: Yes. Well, they would reduce the plant
6 species that the wildlife species is dependent upon. There
7 are several ways that cottonwood/willow habitat, for
8 example, could be impacted.

9 MS. DOUGLAS: What other ways do you mean besides the
10 reduction in --

11 MR. LAND: The reduction could cause direct mortality
12 of the cottonwood/willow. I think they would reduce the
13 viability of the trees to survive disease. They would
14 reduce the cottonwood/willow's potential as endangered
15 species habitat by reducing the moist soil component that
16 certain endangered species such as willow flycatcher
17 requires. They would reduce the ability of the
18 cottonwood/willow stems to regenerate, to basically
19 germinate their seeds.

20 MS. DOUGLAS: How important is the cottonwood/willow to
21 the quality of the habitat along the river?

22 MR. LAND: The cottonwood/willow is the principal
23 component of the native riparian forest.

24 MS. DOUGLAS: Before all the changes that Mr. Shepard
25 alluded to in his opening statement, the damming of the

1 river, for example, the levees, how prevalent was the
2 cottonwood/willow along the Colorado River?

3 MR. LAND: These species were the prevalent species all
4 along the Lower Colorado River.

5 MS. DOUGLAS: How prevalent is the cottonwood/willow
6 now along the Lower Colorado River?

7 MR. LAND: The cottonwood/willow habitat, taken as what
8 we consider the Lower Colorado River as a whole, is a minor
9 component. The ecosystem is currently dominated by Salton
10 Sea cedar.

11 MS. DOUGLAS: Do I understand correctly Salton Sea
12 cedar definitely is not a native species?

13 MR. LAND: Salton Sea cedar is an invasive, nonnative.

14 MS. DOUGLAS: Is Salton Sea cedar anywhere near the
15 value of cottonwood/willow for endangered species and nature
16 species?

17 MR. LAND: It is not the same.

18 MS. DOUGLAS: Can you give an idea of maybe a rough
19 comparison of the two in terms of biological value?

20 MR. LAND: Salton Sea cedar tends to form monoculture
21 and doesn't support the diversity of species that
22 cottonwood/willow native habitat with its greater diversity
23 of species supports.

24 MS. DOUGLAS: I understand from your testimony that
25 CRIT conducted a lot of time and resources for the

1 restoration project. Can you give us some idea how long
2 they have been going and how hard you have been working on
3 this?

4 MR. LAND: The restoration projects represent a
5 significant amount of CRIT's resources that have been
6 devoted to these projects. Ahakhav has been in existence
7 and restoration projects have been conducted there for
8 approximately six to seven years. We are now beginning
9 restoration activities at Achii Hanyo, which is a secondary
10 project.

11 MS. DOUGLAS: You also say, you mentioned the drops in
12 groundwater levels would also reduce the restoration
13 projects. I guess ability to provide habitat?

14 MR. LAND: Yes, that will be one impact.

15 MS. DOUGLAS: Could you elaborate on that? Is that
16 because it would affect the cottonwood/willow or other
17 impacts as well?

18 MR. LAND: Well, the cottonwood/willow is a component
19 that is necessary for certain endangered species. I should
20 retract that. It's desirable for certain endangered
21 species, but it is not the sole component necessary to
22 provide habitat.

23 Moist soils, for example, certain water levels for
24 other endangered species, such as black rail, are also
25 required. So there is other factors besides simply

1 existence of cottonwood/willow habitat.

2 MS. DOUGLAS: You mentioned a couple endangered
3 species. Could you give us an idea of how many endangered
4 species depend on the type of native vegetation that you
5 are providing the reservation?

6 MR. LAND: Southwestern willow flycatchers' preferred
7 habitat, as I understand it, is cottonwood/willow. They
8 utilize other habitat types, but they do have a requirement
9 for moist soils. Clapper rails and black rails use the
10 emergent vegetation. These are -- black rails also have a
11 requirement that the water depth be limited to less than one
12 foot. The razorback sucker and the golden-tailed chub are
13 ongoing efforts by the federal government that to some
14 extent depend on the backwater habitat.

15 MS. DOUGLAS: In your comments on the Draft EIR/EIS for
16 the transfer -- I don't see page numbers here. I guess it
17 is Page 2, the second paragraph. You are talking about, I
18 guess, the criticism of the analysis in the Draft EIR/EIS
19 because it projects the reduction in surface water elevation
20 as average.

21 Can you explain why that is problematic?

22 MR. LAND: An average is, of course, the median or mean
23 across the entire year. As I understand the documents that
24 have been provided, this incorporates larger reductions at
25 certain times of the year. The greatest reduction being in

1 the spring which is the nesting season for birds and it also
2 can affect the spawning season for fish.

3 MS. DOUGLAS: Now, did I understand you correctly in
4 your testimony that absolutely nobody has consulted with the
5 Tribes? Or has there been at some stage some tribal
6 consultation?

7 MR. LAND: No one consulted with us with regard to the
8 conservation measures.

9 MS. DOUGLAS: When did you find out about the
10 possibility of a transfer project?

11 MR. LAND: I personally have only been with the Tribes
12 since July, and the legal department did consult with me
13 shortly after I had started, approximately September I
14 believe. I had heard it as a news item before that, but my
15 department had no prior knowledge.

16 MS. DOUGLAS: Did your department understand that it
17 could impact habitat in the reservation?

18 MR. LAND: Yes.

19 MS. DOUGLAS: Now, in terms of the mitigation proposed
20 in the Draft EIR/EIS and HCP, do you have a clear idea who
21 would pay for it?

22 MR. LAND: No, I don't.

23 MS. DOUGLAS: Have you been -- have any of the parties
24 who would be parties to the transfer consulted you or talked
25 to you about who would pay for it?

1 MR. LAND: No.

2 MS. DOUGLAS: Do you have any idea where it would be
3 implemented or --

4 MR. LAND: No, I don't.

5 MS. DOUGLAS: You mentioned concerns about monitoring.
6 Is there any provision for monitoring in the document, the
7 HCP, right now?

8 MR. LAND: There is a need, of course, for long-term
9 monitoring. There is some information with regard to
10 monitoring that refers to the MSCP.

11 MS. DOUGLAS: Is there any provision or would you know
12 who to turn to if there was a need adaptive management, for
13 example, if impacts were greater than needed?

14 MR. LAND: No, I wouldn't.

15 MS. DOUGLAS: I have no more questions.

16 CHAIRMAN BAGGETT: Thank you.

17 Salton Sea, Mr. Hargreaves.

18 MR. HARGREAVES: No questions.

19 CHAIRMAN BAGGETT: San Diego, Mr. Slater.

20 ----oOo---

21 CROSS-EXAMINATION OF COLORADO RIVER INDIAN TRIBES

22 BY SAN DIEGO COUNTY WATER AUTHORITY

23 BY MR. HASTINGS

24 MS. HASTINGS: Hi, Mr. Land. My name is Stephanie
25 Hastings. I represent San Diego County Water Authority.

1 Just let me get my IID Exhibit 55 opened.

2 Mr. Shepard, is it possible to put up your original
3 map, Exhibit 10?

4 MR. SHEPARD: Absolutely.

5 MS. HASTINGS: Thanks.

6 Mr. Land, referring to the Tribes Exhibit No. 10, can
7 you identify for us, forgive my pronunciation, Ahakhav
8 Tribal Preserve?

9 MR. LAND: That is indicated by the reddish-shaded
10 area.

11 MS. HASTINGS: Approximately how far from Parker Dam is
12 that?

13 MR. LAND: It is approximately, I believe, around four
14 miles downstream.

15 MS. HASTINGS: In your written testimony and I think
16 even today you indicated that over the past century the
17 Tribes have had witnessed dramatic changes along the
18 riparian corridor; isn't that correct?

19 MR. LAND: Yes.

20 MS. HASTINGS: In fact, in response to those changes,
21 as a precipitating factor, it was one of the four of your
22 restoration project; isn't that true?

23 MR. LAND: Yes.

24 MS. HASTINGS: As part of the restoration project you
25 have identified the fact that cottonwood and willow habitat

1 is included in the restoration project, correct?

2 MR. LAND: Yes, it is.

3 MS. HASTINGS: And that project has been successful, so
4 far?

5 MR. LAND: They have been successful, yes.

6 MS. HASTINGS: With respect to water surface elevation,
7 you have also testified to the fact that there are fairly
8 dramatic changes in water surface elevation even on a daily
9 basis; is that correct?

10 MR. LAND: I don't believe I specifically mentioned
11 that, but there are changes greatly.

12 MS. HASTINGS: You are aware those changes could be as
13 much as 60 inches on a daily basis; is that correct?

14 MR. LAND: I don't know of a certainty what the actual
15 range is, but it can be significant.

16 MS. HASTINGS: Would you be aware of the fact that the
17 Bureau of Reclamation has determined that those changes
18 would be as much as 50 inches on a daily basis?

19 MR. LAND: I am not aware of my own knowledge.

20 MS. HASTINGS: Maybe I could be more specific.

21 Are you aware that the draft environmental impact has
22 concluded that daily fluctuations in river surface
23 elevations could be as much as 60 inches?

24 MR. LAND: I don't recall that specifically, but that
25 sounds normal.

1 MS. HASTINGS: Thanks.

2 Would you also be aware of the fact that the Bureau of
3 Reclamation in the DEIR has concluded that at full project
4 implementation the minimum and maximum daily fluctuations
5 that we were just talking about, as much as 60 inches on a
6 daily basis, would remain the same? Are you aware of that
7 fact?

8 MR. LAND: I have heard that statement during the
9 testimony.

10 MS. HASTINGS: Are you aware of the fact in the DEIR as
11 well?

12 MR. LAND: I don't recall that specifically.

13 MS. HASTINGS: I see you have the document in front of
14 you. I would like you to turn to Page 3.2-105. If you
15 would turn your attention to -- it is the fourth full
16 paragraph. It begins with "The results of the analysis
17 indicates."

18 MR. LAND: Yes, I have that.

19 MS. HASTINGS: If you could read that paragraph to
20 yourself, and I am going to focus on the language which
21 appears in italics at the bottom of the paragraph.

22 MR. LAND: I read it.

23 MS. HASTINGS: So again, I'm just going to ask you the
24 same question. Does it appear then that the Draft
25 Environment Impact Report has concluded that those same

1 daily fluctuations from minimum to maximum highs and lows
2 would remain the same even after project implementation?

3 MR. LAND: I believe it says that the duration of the
4 highs and lows would change, but that the maximums and
5 minimums would be unaffected.

6 MS. HASTINGS: Thank you.

7 Are you aware of the fact that the proposed project is
8 proposed to be implemented over a period of 10 to 20 years?

9 MR. LAND: Yes, I am.

10 MS. HASTINGS: Now, I believe that you testified about
11 the impacts that the Environmental Impact Report has
12 assessed or concluded with respect to at least willow
13 habitat to begin with. Are you aware that the EIR has
14 concluded, or I should say, isn't it correct that the EIR
15 has concluded that between 186 and 279 acres of
16 cottonwood/willow habitat could potentially be impacted by
17 the project?

18 MR. LAND: Yes, I am.

19 MS. HASTINGS: I know in your testimony you identified
20 the fact that the Tribes are concerned about monitoring.
21 Were you not aware of the fact that the EIR includes a
22 monitoring component in its mitigation measures?

23 MR. LAND: There are no specifics with regard to the
24 monitoring.

25 MS. HASTINGS: If you would, can you then turn the page

1 to -- this is on 3.2-108.

2 Are you there?

3 MR. LAND: I am.

4 MS. HASTINGS: And if you look in the first full
5 paragraph, can you turn your attention to the first bullet?
6 Can you read for we what that says?

7 MR. LAND: It says monitor 372 acres of occupied
8 habitat that could be affected by the changed in point of
9 diversion for 400 KAF of water.

10 MS. HASTINGS: If you would like to read down through
11 the rest of the three bullet items, could you do that for me
12 for a second?

13 MR. LAND: Out loud?

14 MS. HASTINGS: No, just to yourself.

15 MR. LAND: I have read through them.

16 MS. HASTINGS: Thanks.

17 After reading that wouldn't you agree, then, that the
18 project proponents could be responsible for not only
19 monitoring, but then also restoring and maintaining as much
20 as 1,116 acres of cottonwood/willow habitat?

21 MR. LAND: Could you restate that? I was confused on
22 what -- you seemed to be combining different things,
23 monitoring and restoring.

24 MS. HASTINGS: Correct. And I appreciate that
25 distinction. Let me ask the question again.

1 After reading through the portion of the text, wouldn't
2 you agree that the project proponents will be responsible
3 for restoring and maintaining as much as 1,116 acres
4 cottonwood/willow habitat?

5 MR. LAND: I see as it says that they are monitoring
6 372 -- all right.

7 I think, yes, it is my understanding that potentially
8 that much could be restored and maintained.

9 MS. HASTINGS: Fantastic, thanks.

10 Now following down to the bottom of that page, this is
11 3.2-108 again, can you confirm that the Environment Impact
12 Report identifies an impact for backwater habitat?

13 MR. LAND: I believe you are referring to impact 3R-4?

14 MS. HASTINGS: Correct.

15 If you will then turn to Page 3.2-109, at the bottom of
16 the page, can you confirm that, in fact, the project
17 proponents have agreed to mitigate and restore up to 44
18 acres of backwater habitat? You were right there on the
19 bottom of the page.

20 MR. LAND: Yes, I see where it says that, yes.

21 MS. HASTINGS: And, sir, are you aware that United
22 States Fish and Wildlife Service which is charged with
23 protecting endangered species and their habitat has issued a
24 biological opinion for the implementation agreement and thus
25 for this project?

1 MR. LAND: Yes, I am.

2 MS. HASTINGS: Are you -- would you be surprised by the
3 fact that the Bureau of Reclamation will be responsible for
4 implementation of the Habitat Conservation Plan?

5 MR. LAND: The Habitat Conservation Plan?

6 MS. HASTINGS: Yes.

7 Are you aware of that? I know you testified previously
8 that you weren't aware of that fact, which agency would be
9 responsible for a Habitat Conservation Plan. I just wanted
10 to ask you whether you would be surprised that the Bureau of
11 Reclamation would indeed be responsible for that project?

12 MR. LAND: As I understand, there is no Habitat
13 Conservation Plan for the Lower Colorado River. The
14 document seems to refer that to the MSCP.

15 MS. HASTINGS: Thank you, sir.

16 That is all my questions.

17 CHAIRMAN BAGGETT: Thank you.

18 Mr. Hargreaves, should we resume? What time do you
19 have to leave?

20 MR. HARGREAVES: We just had a conference. I
21 understood that we were breaking for lunch. If not, I can
22 stay for another hour.

23 CHAIRMAN BAGGETT: I would like to finish this panel.
24 Then we will finish the discussion and break for lunch.

25 With that, we have one more cross. Let's finish this

1 panel and then we will go back to your previous discussion.

2 ---oOo---

3 CROSS-EXAMINATION OF COLORADO RIVER INDIAN TRIBES

4 BY IMPERIAL IRRIGATION DISTRICT

5 BY MR. HATTAM

6 MR. HATTAM: Hello, Mr. Land. My name is Mark Hattam.

7 I represent the Imperial Irrigation District.

8 Were you here for the testimony of the Tribes in Phase

9 I of this hearing, of Mr. Gardner and Mr. Hansen?

10 MR. LAND: No, I wasn't.

11 MR. HATTAM: I am going to read to put in context a
12 couple questions some testimony given by them on Wednesday,
13 April 24th, of this year, in Phase I. I am going to start
14 on Page 454 of that transcript at Line 13, questioning by
15 Mr. Osias of Imperial Irrigation District of Mr. Gardner and
16 Mr. Hansen.

17 Mr. Osias asked this question: Colorado River Indian
18 Tribes have the right to order water from Lake Mead for
19 diversion into the reservation; is that correct?

20 Mr. Hansen answered: Yes, that is right.

21 Mr. Osias asked: Did you hear the description of how
22 Imperial submits its water in advance, then the water
23 comes?

24 Mr. Hansen answered: Yes.

25 Mr. Osias: Is it the same situation for the Colorado

1 River Indian Tribes?

2 Mr. Hansen: Yes.

3 Mr. Osias then asked: The water that is ordered by the
4 Colorado Indian River Tribes, when it is diverted, does it
5 generate power like within Imperial they put power plants on
6 the canal structures?

7 Mr. Hansen answered: No. We have no power facilities
8 on the canal structures.

9 Mr. Osias asked: Headgate Rock Dam is in the river,
10 then, and not part of the canal system that generates power,
11 correct?

12 Mr. Hansen answered: Yes, that's right.

13 Mr. Osias then asked: One of its purposes is to allow
14 water to leave the river through a diversion facility and
15 get it to the reservation?

16 Mr. Hansen answered: Yes.

17 And then Mr. Osias finally asked: You've offered no
18 evidence that the transfer that is proposed would in any way
19 interfere with the diversion of water into the reservation;
20 isn't that correct?

21 And Mr. Hansen answered: That is correct.

22 The reason I read that is I want to ask you some
23 questions about what is on the screen right there in terms
24 of the reservation.

25 In Phase II of this proceeding we are not talking about

1 power on the Headgate Rock Dam, correct, we're talking about
2 potential impacts that CRIT feels may occur in the habitat
3 areas on the Colorado River?

4 MR. LAND: This hearing is, as I understand it, is with
5 regard to the biological issues.

6 MR. HATTAM: We can't quite see the outline on this
7 screen as well as we could see it in the exhibits that are
8 submitted, but basically this fine line right here is the
9 outline that is -- what is that, the fine line that is, I
10 believe, Exhibit 10 of CRIT?

11 MR. LAND: I believe what you're referring to is the
12 boundary of the reservation.

13 MR. HATTAM: So that large area surrounded by the fine
14 line is the outline of the entire reservation, right?

15 MR. LAND: The outer line is the reservation boundary.

16 MR. HATTAM: The very dark area there right on the
17 river is the habitat area that we have been talking about in
18 your testimony today, right?

19 MR. LAND: That is one of the areas.

20 MR. HATTAM: Now the water that is diverted by the CRIT
21 under its diversion, that is not the water that is going
22 into the habitat areas up here, is it?

23 MR. LAND: The area that is affected, as I understand
24 it by the river itself, the surface elevation, and it is
25 also supplemented with water from our water appropriation.

1 MR. HATTAM: Some of the water you appropriate does go
2 into this area; is that right?

3 MR. SHEPARD: I don't have a formal objection at this
4 time. I want to clarify that Mr. Land is not the director
5 of the Tribal Preserve and doesn't -- his response doesn't
6 include maintenance, establish, revegetation on that side.

7 MR. HATTAM: I'll just ask him his understanding.

8 Is it your understanding that some of the water
9 diverted by the Tribe goes into habitat areas on the river?

10 MR. LAND: It is my understanding that there is some
11 use of irrigated water.

12 MR. HATTAM: If the testimony given in Phase I was
13 correct, I realize you weren't here and you didn't hear that
14 testimony, I ask you to assume that that testimony was
15 correct by the Tribe, that there would be no affect on the
16 Tribes' diversions by IID's proposed transfer, then that
17 wouldn't affect the water that was in this area here, in the
18 habitat area, at least to the extent of the Tribes'
19 diversion water, right?

20 MR. SHEPARD: I'm going to have to object. As I said
21 already he is not an expert --

22 CHAIRMAN BAGGETT: I would sustain that.

23 MR. SHEPARD: -- in this area. He is a biologist.

24 CHAIRMAN BAGGETT: I would sustain that objection. If
25 you want to rephrase that -- you're asking questions to the

1 witness who is here on Phase II. This is a fishery
2 biologist, our wildlife biologist.

3 MR. HATTAM: Mr. Chairman, I am trying to get to the
4 transfer or the CRIT transfer diversion water out of the
5 picture. We realize that we are only talking about the
6 Colorado River water flow. That is where I am going with
7 this. I'm not asking him to testify to the accuracy of the
8 people in Phase I, but just to assume that it is correct.

9 CHAIRMAN BAGGETT: Rephrase your question.

10 MR. HATTAM: I will rephrase.

11 Is your understanding, Mr. Land, that the Tribes'
12 concern here in Phase II is that the transferred water will
13 not reach the Colorado River habitat areas and reduce the
14 level of the water? If the water is transferred before it
15 gets to the Tribal lands, then there will be a reduction in
16 flow in the habitat areas?

17 MR. LAND: If the transfer is implemented, it is my
18 understanding that there will be reduced flow in the river.

19 MR. HATTAM: It is your testimony, isn't it, that the
20 draft EIR/EIS has concluded that that lower elevation is
21 roughly 4.48 inches?

22 MR. LAND: As a median.

23 MR. HATTAM: As a median.

24 Now we have been talking about some different EIR/EIS's
25 here. Is it your understanding that the federal government

1 has prepared a separate Environmental Impact Statement
2 related to the Inadvertent Overrun Policy?

3 MR. LAND: There is an Environmental Impact Statement,
4 I believe, that incorporates the Inadvertent Overrun Policy.
5 I believe it is as an appendice.

6 MR. HATTAM: I am looking at the first page of your
7 testimony, which is Exhibit 17?

8 Do you have that there?

9 MR. LAND: Yes.

10 MR. HATTAM: Third paragraph says: As the Draft
11 Environmental Impact Report/Environmental Impact Assessment,
12 Draft EIR/EIS, prepared for the Imperial Irrigation
13 District, IID, and the U.S. Bureau of Reclamation, BOR,
14 states that the proposed transfer will impact CRIT's
15 biological resources within the riparian corridor.

16 Do you see that?

17 MR. LAND: Yes, I do.

18 MR. HATTAM: So there you are talking about two
19 different assessments; one, the transfer assessment and one
20 by the Bureau, right?

21 MR. LAND: I am not sure what you are saying there.

22 MR. HATTAM: You then follow up at the bottom of the
23 page. You talk about the -- you strongly believe that the
24 Draft EIR/EIS should model the combined affect of the
25 transfer and the maximum projected effects of the

1 Inadvertent Ovrerrun and Payback Policy.

2 You see that?

3 MR. LAND: Yes, I see that.

4 MR. HATTAM: In your testimony you talk again about
5 there should be a modeling regarding Inadvertent Overrun
6 Policy.

7 Do you recall that testimony?

8 MR. LAND: I recall the testimony. What I am saying is
9 that the maximum payback amounts under the IOP and should be
10 additive. The reductions that are part of the
11 implementation to have a combined effect.

12 MR. HATTAM: Do you know if the Bureau or anybody
13 modeled the lower four-inch plus elevation of the river with
14 the Inadvertent Overrun Policy in mind?

15 MR. LAND: I don't know what you mean by "in mind."

16 MR. HATTAM: Did they model? Did they model it, do you
17 know?

18 MR. LAND: They modeled the 4.4.

19 MR. HATTAM: Your testimony was that that was the
20 median?

21 MR. LAND: Yes.

22 MR. HATTAM: You made a comment in your testimony a few
23 minutes ago about the projections on the Colorado River are
24 very difficult because it's highly unpredictable. Do you
25 remember that testimony?

1 MR. LAND: Yes.

2 MR. HATTAM: Are you aware that the EIR/EIS, the
3 transfer EIR/EIS, that you looked at for this was a draft?

4 MR. LAND: Yes, I am.

5 MR. HATTAM: Are you aware that comments were submitted
6 not only by the Tribes, but by others?

7 MR. LAND: I am aware there were other comments
8 submitted.

9 MR. HATTAM: Do you expect that the people who are
10 developing the EIR/EIS will look at those comments and
11 decide whether they are merited and whether they require
12 further study?

13 MR. LAND: I don't know what to expect.

14 MR. HATTAM: Do you --

15 Mr. Chair, that is all.

16 CHAIRMAN BAGGETT: Thank you.

17 I have no questions for this witness.

18 Andy.

19 MR. FECKO: Sure.

20 ----oOo----

21 CROSS-EXAMINATION OF COLORADO RIVER INDIAN TRIBES

22 BY STAFF

23 MR. FECKO: Morning, Mr. Land.

24 CHAIRMAN BAGGETT: Afternoon at this point.

25 Correct the record here.

1 MR. SHEPARD: Hard to tell in a windowless room.

2 CHAIRMAN BAGGETT: Used to have nice pictures in here.

3 MR. FECKO: I want to ask some questions regarding the
4 knowledge that the Tribes have or that you specifically have
5 regarding some habitats within the reservation.

6 I will start with if CRIT has an accurate picture of
7 the groundwater resources that are adjacent to the river or
8 on reservation?

9 MR. LAND: I don't think there is a complete picture.

10 MR. FECKO: But you do some monitoring of it? In other
11 words, before you would start a restoration project on the
12 river, you would do some sampling of groundwater in that
13 location to see if it was a suitable site?

14 MR. LAND: Before a project was initiated, yes, there
15 would be the depth to groundwater established.

16 MR. FECKO: And I imagine -- I think you testified that
17 you weren't asked for any -- that information was not
18 elicited from you by the parties seeking the transfer?

19 MR. LAND: That is correct.

20 MR. FECKO: How many acres of riparian habitat have
21 been restored by CRIT on the Colorado River?

22 MR. LAND: There is approximately 1,200 acres I believe
23 at Ahakhav. As far as the other acreages, I am going to
24 have to estimate the other at 2- to 300 acres on the
25 corridor.

1 MR. FECKO: Do you have a rough idea of what that
2 restoration cost -- what that kind of restoration would cost
3 per acre?

4 MR. LAND: I don't have those numbers immediately
5 available.

6 MR. FECKO: And has CRIT identified any other potential
7 restoration sites on the reservation?

8 MR. LAND: Yes, they have.

9 MR. FECKO: How many acres is that, roughly, of that
10 cottonwood/willow habitat, let's say?

11 MR. LAND: It is difficult to ascertain that without
12 basically checking the groundwater tables.
13 Cottonwood/willow requires no more than nine feet to the
14 water table as a maximum. Optimum is considered to be
15 approximately four feet. We have in the neighborhood of
16 13,000 acres that are considered to be under consideration
17 as conservation areas, but only a fragment -- only a
18 percentage of that would be suitable for cottonwood/willow.

19 MR. FECKO: Of the 1,200 acres that CRIT has restored,
20 do acres acreages need continual maintenance to survive?

21 MR. LAND: It's my understanding that there's
22 differences between sites, even under Ahakhav. Some are
23 suitable without any maintenance and some will require
24 maintenance.

25 MR. FECKO: That is all.

1 Thank you.

2 MR. PELTIER: I just have one question. If I missed it
3 on previous testimony, I am sorry.

4 Does the Colorado Indian River Tribes in any places
5 irrigate their riparian habitat specifically or provide
6 additional water over what is just normally in the river or
7 what they get from the groundwater?

8 MR. LAND: I don't -- during the establishment phase,
9 habitat is irrigated. After that none of the projects I was
10 directly involved with continues irrigation.

11 MR. PELTIER: Thank you, that is all.

12 CHAIRMAN BAGGETT: Do you have any redirect?

13 MR. SHEPARD: Yes.

14 CHAIRMAN BAGGETT: Let's take a lunch break and we'll
15 come back with your redirect. We still have another panel.
16 We will --

17 Is Mr. Hargreaves still around or did he take off?

18 Does anybody know?

19 Off the record.

20 (Break taken.)

21 ----oOo----

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

---oOo---

CHAIRMAN BAGGETT: Back on the record.
Redirect for Colorado Indian River Tribes.
Mr. SHEPARD: I have a few questions.

---oOo---

REDIRECT EXAMINATION OF COLORADO RIVER INDIAN TRIBES
BY MR. SHEPARD

MR. SHEPARD: First of all, Mr. Land, could you clarify your duties and responsibilities as wildlife manager?

MR. LAND: My duties, as I said, include wildlife management, overseeing certain habitat restoration projects, which Ahakhav is not one of them, and being consulted on biological issues that affects the Tribes.

MR. SHEPARD: On cross-examination Mr. Hattam asked a series of questions about the Ahakhav Preserve. To the extent that you are able to discuss that, I would like to follow up on that. Specifically Mr. Hattam inquired into the method by which the Ahakhav acquires policy for restoration project.

Using CRIT 11, could you explain that to the best of your knowledge?

MR. LAND: The Tribal Preserve is managed by a separate department. I really don't have anything to do with the day-to-day operations of the preserve. That is an entirely

1 separate department. My understanding is that there is some
2 areas that are irrigated and other areas that aren't; I just
3 don't know the exact extent.

4 MR. SHEPARD: Go back to CRIT 10 for a second,
5 Colorado Indian River Tribes 10. The Achii Hanyo Preserve,
6 is that the preserve that you are focused on or the one
7 that you worked on in the past?

8 MR. LAND: Yes, it is.

9 MR. SHEPARD: Is that green?

10 MR. LAND: That is Achii Hanyo.

11 MR. SHEPARD: I want to ask you a question about the
12 cost of mitigation.

13 CHAIRMAN BAGGETT: Could you clarify for the record the
14 exhibit where the green is, maybe?

15 MR. SHEPARD: When we were describing Achii Hanyo, you
16 were pointing to CRIT Exhibit 10, to the green area. That
17 is about the midpoint of the map, green-shaded area.

18 CHAIRMAN BAGGETT: Very good. Thank you.

19 MR. SHEPARD: Mr. Fecko asked you about the cost of
20 that restoration. You're experienced at Achii Hanyo,
21 recognizing that that is a different ecosystem than the
22 Ahakhav Preserve riparian mitigation that is going to be
23 done. What are the costs associated with, say, an acre of
24 mitigation or how you can break that down?

25 MR. LAND: Well, the only restoration that has been

1 accomplished so far at Achii Hanyo was with the available
2 funds, which was very limited. And using the very cheapest
3 option that was available, which was seeding, we were able
4 to use \$50,000 to establish or to attempt to establish -- it
5 was seeded this year, 20 acres. That is a very minimal
6 amount of money for restoration.

7 MR. SHEPARD: Would you anticipate that cost to be
8 different depending on where you conducted the restoration?

9 MR. LAND: Absolutely. The cost of restoration depends
10 on a variety of factors, such as salinity, availability of
11 water, water salinity, the depth to the water table. So
12 that the actual cost of restoration is going to vary from
13 project to project.

14 MR. SHEPARD: What plant species are you restoring at
15 Achii Hanyo?

16 MR. LAND: Because of high levels of salinity in the
17 sale, we are currently working with mesquite which is more
18 salt tolerant and doesn't require the relatively high water
19 table of cottonwood/willow. We will attempt to locate in
20 the future areas where cottonwood/willow can be established.
21 It will depend on a variety of factors.

22 MR. SHEPARD: Just turning to some issues in terms of
23 minimum and maximum reduction in stream elevations as a
24 result of the transfer.

25 What could be some of the -- I believe on

1 cross-examination, and correct me if I am wrong, you
2 testified that there would be some -- that the minimum and
3 maximum, according to the Draft EIR/EIS document that you
4 have in front of you, are going to be about 60 inches, which
5 is more or less what it is today, what is the Tribe's
6 concern in terms of the difference in water surface
7 elevation?

8 MR. LAND: Well, the minimum and maximum, like the
9 median itself, is only part of the picture. The fact that
10 it reaches a maximum that is similar to what is occurring
11 under a no-project alternative, isn't quite as significant
12 as the fact of how long it reaches a certain maximum or a
13 certain minimum. Basically, the duration and the frequency
14 of these predictions, that is what we are concerned with.

15 MR. SHEPARD: In your opinion, what sort of information
16 needs to be developed in order to adequately predict the
17 biological impacts of the transfer?

18 MR. LAND: Basically, the timing, which is important
19 for a variety of species, the timing duration and frequency
20 of reductions. That is one thing we feel that we feel --
21 that CRIT believes is very important information to include
22 in order to have a full picture of the impact.

23 MR. SHEPARD: Can I have you turn back to the page that
24 Ms. Douglas had you turn to, Page 3.2-108. Actually, it's
25 further back.

1 MR. LAND: I am there.

2 MR. SHEPARD: In looking at the monitoring issue, which
3 you were directed to look at before, how much discussion of
4 monitoring of cottonwood/willow impacts into the future is
5 there?

6 MR. LAND: Could you repeat that, please?

7 MR. SHEPARD: On page -- on that page if you could just
8 look at the first full paragraph of the series of the
9 discussion of what the Bureau of Reclamation has proposed to
10 do. One of those concerned monitoring of cottonwood. How
11 much discussion of that monitoring plan is there on that
12 page or that preceding page as well?

13 MR. LAND: I'm trying to locate where it specifically
14 says, but I believe from previously examining it there was
15 really only one sentence that said that cottonwood/willow
16 habitat would be monitored, but it wasn't specific.

17 MR. SHEPARD: Does that adequately lay out, in your
18 opinion, a long-term monitoring plan for cottonwood/willow
19 habitat?

20 MR. LAND: No. It seems to lack any specifics on how
21 the monitoring would actually occur.

22 MR. SHEPARD: One follow-up final question.

23 For backwater habitat, which I believe and you can
24 correct my page citation, it is Page 3.2-109 towards the
25 bottom. Is there any discussion of long-term monitoring of

1 the impacts of the proposed transfer on backwater habitat?

2 MR. LAND: No, I don't see any.

3 MR. SHEPARD: Thank you, Mr. Land.

4 CHAIRMAN BAGGETT: Any cross?

5 Mr. Gilbert.

6 MR. GILBERT: No.

7 CHAIRMAN BAGGETT: Mr. Du Bois.

8 MR. DU BOIS: No.

9 CHAIRMAN BAGGETT: Mr. Rodegerdts.

10 MR. RODEGERDTS: No.

11 CHAIRMAN BAGGETT: Mr. Fletcher.

12 There is a big void all the way down to Mr. Rossmann.

13 MR. ROSSMANN: No, your Honor, thank you.

14 MR. SLATER: We are checking.

15 MS. HASTINGS: Just one second, sir.

16 CHAIRMAN BAGGETT: While we're checking, Mr. Osias.

17 MR. HATTAM: One question.

18 CHAIRMAN BAGGETT: Also you --

19 MS. HASTINGS: No questions.

20 ---oOo---

21 RE-CROSS-EXAMINATION OF COLORADO RIVER INDIAN TRIBES

22 BY IMPERIAL IRRIGATION DISTRICT

23 BY MR. HATTAM

24 MR. HATTAM: Mr. Land, can you point on your drawing

25 there if you know where Headgate Rock Dam is located,

1 roughly. Go ahead and point. You can walk right up to the
2 screen and point, and we will describe it for the record.

3 MR. LAND: Headgate Rock Dam would be up here above the
4 town of Parker.

5 MR. HATTAM: This is Exhibit 10 of the Tribes, and it
6 is called Colorado Indian Reservation and for the record the
7 witness has pointed to a location above the town of Parker
8 on this exhibit.

9 Is that correct, Mr. Land?

10 MR. LAND: Approximately.

11 MR. HATTAM: Thank you.

12 CHAIRMAN BAGGETT: There is no other cross. Would you
13 like to submit into evidence?

14 MR. SHEPARD: Yes.

15 CHAIRMAN BAGGETT: Yes, Tom.

16 MR. PELTIER: I am sorry, I had a question on Anchii
17 Hanyo. Do you know exactly how many miles that is or
18 approximately how many miles it is from the river?

19 MR. LAND: From the river itself it would be
20 approximately five or six miles. It is within the
21 floodplain.

22 MR. PELTIER: Within the floodplain. There is
23 irrigated agriculture in the vicinity there within that
24 five-mile area?

25 MR. LAND: There is irrigated agriculture, yes.

1 MR. PELTIER: Just so I am not missing the point here,
2 are you saying that the change in flows from the Colorado
3 River could affect the groundwater levels at Achii Hanyo?

4 MR. LAND: They probably -- not -- it's going to be
5 difficult to tell. I am uncertain what affect, if any, it
6 will have at Achii Hanyo. Our primary concern is the areas
7 along on the river that we are trying to restore.

8 But as far as the Tribal Preserve goes, I don't have
9 direct knowledge because that is not under my responsibility.

10 MR. PELTIER: That is all.

11 Thank you.

12 CHAIRMAN BAGGETT: Exhibits.

13 MR. SHEPARD: We would like to request permission to
14 move CRIT Exhibits into evidence. We would like the
15 permission to submit the testimony of Dennis Patch as a
16 policy statement. We can resubmit it if there is no
17 objection.

18 MR. OSIAS: No objection from --

19 MR. SLATER: No objection.

20 MR. SHEPARD: We are going to resubmit and label it
21 policy statement?

22 CHAIRMAN BAGGETT: We can make that change.

23 MR. SHEPARD: CRIT moves its Exhibits 10 to 17 into
24 evidence.

25 CHAIRMAN BAGGETT: Accepted.

1 Mr. Du Bois has asked for the remaining five minutes
2 from his opening statement, but not for evidentiary nature.
3 As I recall, when he submitted his opening statement on
4 Phase I, he asked if he could reserve time for Phase II, and
5 it is only a statement and an accommodation.

6 MR. DU BOIS: I would like to summarize what I have
7 been attempting to establish by my cross-examination of
8 witnesses during Phase II. The present IID/San Diego County
9 Water Authority agreement proposed to transfer up to 300,000
10 acre-feet of water. In my mind, farmers must after the
11 transfer use about the same amount of water for irrigation
12 that they use now. The delivery system seems to be able to
13 operate with about a hundred thousand acre-feet less seepage
14 and spillage after expensive structural changes are made.

15 Without considerable financial compensation farmers can
16 probably not continue to farm to the same degree as they
17 currently do while conserving 300,000 acre-feet of water,
18 except at the expense of damaging their field distribution
19 uniformity and/or the long-term leach fraction. There is
20 great public opposition to the fallowing as a means of
21 either maintaining Salton Sea or in order to transfer water
22 out of the service area. If fallowing were limited in
23 acreage and limited in time it might be more acceptable.

24 However, with the limited amount of knowledge available
25 on this matter, we join with our neighboring farmers in

1 opposition to fallowing because where does it stop? The
2 logic for fallowing has little -- a little has no finite
3 objective. There is not enough wildlife habitat to satisfy
4 environmentalists now, and there never will be. San Diego
5 and many other cities will always want to just improve their
6 water reliability by fallowing a few more farms because that
7 is where the cheapest water is. Every acre of farm fallowed
8 in Imperial leaves the rest of us with much less
9 infrastructure in the way of farm services. If not
10 completed, this transfer has already cost all of us
11 involuntary Imperial Irrigation District farmers and land
12 owners a bundle. And if it is completed, we have no
13 assurance we won't -- it won't cost us a lawsuit for
14 damaging Salton Sea.

15 What I fear most of all is the loss of the utility of
16 our subsurface drainage system. We hope to gain several
17 things by participating in these hearings. Our own Imperial
18 Irrigation District does not now show much interest in
19 listening to their farmer constituents, so we hoped our
20 appearance would make them more receptive to our request.
21 For many reasons we believe this transfer is not right for a
22 decision by the State Water Resource Control Board. Farmers
23 and landowners do not even have the basic advantage of
24 having an approved EIR to use as a guide as to what they are
25 getting into. We know if we farm with less water, then in

1 most cases it will result in either less crop produce or
2 more expensive irrigation practices or a combination.

3 In any event, the immediate result will be less surface
4 tailwater. This will manifest itself by reduction in drain
5 flow quantity to maintain Salton Sea and a worsening in
6 water quality since the tile line effluent will constitute a
7 much greater percentage of drain systems total flow.

8 Imperial Valley can absolutely not afford to have its
9 tile drainage system impeded. Our agriculture is even more
10 dependent on subsurface drainage than is Westlands Water
11 District. Westlands was promised drainage by the Department
12 of Interior, but does not have it. Imperial Irrigation
13 District was promised drainage by President Coolidge, and we
14 don't want to lose it. No transfer at any price is worth
15 risking interference with our drainage system.

16 In my testimony for Phase I I requested that the Board
17 recess the hearing until Imperial Irrigation District more
18 thoroughly plans the long-range effects of this transfer. I
19 still consider that as an essential move. I'm not oblivious
20 to the importance of the QSA to the whole state. But
21 Imperial farmers should not be forced to risk their life's
22 earnings in the process. Imperial Agriculture Valley's
23 important to the rest of the state and the nation is mostly
24 because we can grow winter crops. So can Arizona and Mexico
25 who both compete for winter markets. Imperial farmers have

1 costly restrictions imposed by California's OSHA, California
2 labor scales, California crop protection restrictions.
3 Neither Arizona nor Mexico farms have those costly farming
4 regulations. Imperial farmers sure can't afford increased
5 water and drainage costs in the light of those situations.

6 Thank you very much.

7 CHAIRMAN BAGGETT: Thank you.

8 With that, Mr. Gilbert.

9 MR. GILBERT: Thank you, Mr. Chairman.

10 It is my purpose here today to present testimony to aid
11 this Board in making the appropriated decision with respect
12 to the request for approval of the petition to transferred
13 water. IID needs to transfer the water to comply with
14 earlier decisions of this Board and make new water available
15 for other California users. IID was not told to shut down
16 part of its farmland, but to become more efficient so the
17 state's water supply can be stretched to cover increasing
18 needs. IID is offering to fully comply and cooperate. IID
19 has agreed to conserve and transfer up to 200,000 acre-feet
20 of water to San Diego County Water Authority which is a
21 nonright holder on the Colorado River.

22 In order to get the water to the Authority, IID has to
23 satisfy Coachella Valley Water District and Metropolitan
24 Water District, who are junior right holders, by agreeing to
25 transfer a hundred thousand acre-feet to them at much lower

1 prices.

2 The environmental preview process has brought out
3 information that several changes will result if the transfer
4 becomes reality. One important change is that return flows
5 from Imperial Irrigation District will decrease. Impurities
6 that are in our water supply, which are inherently
7 concentrated by agriculture, will become even more
8 concentrated in these reduced return flows. The Salton Sea,
9 which is sometimes a nuisance and a liability and sometimes
10 a national treasure, will finally quit growing and start
11 shrinking. Its relentless change in salinity will be
12 accelerated.

13 My witness, George Ray, will testify that some of those
14 changes actually should be beneficial. He will also explain
15 that a third alternative different from the two considered
16 in the EIR/EIS, one that is an alternative that he is
17 proposing, might be more effective in preventing some of the
18 more serious potential impacts of the transfer. He will
19 also testify that it is unacceptable for IID to bear the
20 risk of future claims for corrections or compensation if and
21 when unexpected impacts affect persons, property or the
22 environment.

23 Now, Mr. Chairman, I think it is my honor to call the
24 witness that we've been most anticipating.

25 (Oath administered by Chairman Baggett.)

1 MR. GILBERT: Thank you, Mr. Chairman.

2 ---oOo---

3 DIRECT EXAMINATION OF LARRY GILBERT WITNESS

4 BY MR. GILBERT

5 MR. GILBERT: Mr. Ray, would you please state your name
6 and spell your last name for the record?

7 MR. RAY: My name is George Ray, R-a-y.

8 MR. GILBERT: In referring to the document in front of
9 you marked Gilbert 1, can you tell us what it is?

10 MR. RAY: It's a statement and also comments on the
11 EIR/EIS that was submitted to the IID, Imperial Irrigation
12 District.

13 MR. GILBERT: That would be your testimony in this
14 proceeding?

15 MR. RAY: That's correct.

16 MR. GILBERT: Have you had a chance to review it
17 recently?

18 MR. RAY: Yes, I have.

19 MR. GILBERT: Is it a true and accurate copy of your
20 testimony to the best of your knowledge?

21 MR. RAY: Yes, it is.

22 MR. GILBERT: Do you so state under penalty of perjury?

23 MR. RAY: I do.

24 MR. GILBERT: Mr. Chairman, I think it would be
25 appropriate that the number of this exhibit be changed to

1 14. It is Number 1 in Phase II, but I have 13 exhibits from
2 Phase I. And I suspect it should be changed to 14.

3 Mr. Ray, would you briefly describe your educational
4 background?

5 MR. RAY: College. I have a Bachelor's degree in
6 geology and Master's degree in geology from University of
7 Oklahoma.

8 MR. GILBERT: Since finishing college, how have you
9 been employed?

10 MR. RAY: Immediately after college I was employed on
11 the seismology team exploring for oil and gas. Later I
12 worked as an exploration geologist with wildcat wells with
13 Texaco. After that I was employed as a secondary school
14 teacher for approximately seven years. The last 33 years I
15 have been self-employed.

16 MR. GILBERT: In what business?

17 MR. RAY: Aquaculture, primarily catfish interests.

18 MR. GILBERT: Do you have ownership interest in
19 farmland with the IID service area?

20 MR. RAY: I do.

21 MR. GILBERT: While farming have you been active in
22 various farm or trade organizations?

23 MR. RAY: Yes, I have. I am currently president of the
24 California Aquaculture Association and immediate past
25 president of Imperial County Farm Bureau.

1 MR. GILBERT: Were you also a director of the
2 California Farm Bureau for a while?

3 MR. RAY: I was state director and currently serve on
4 the Nutrient Technical Advisory Committee for the regional,
5 local Regional Water Board.

6 MR. GILBERT: Thank you.

7 A few questions regarding your farming operation. Did
8 you oversee the design and construction as well as operation
9 of your fish farm facility?

10 MR. RAY: That is true, and I currently still do.

11 MR. GILBERT: Do you have need for a biologist or
12 veterinarian in your fish farm?

13 MR. RAY: I do have on my staff three biologists and a
14 veterinarian. For the most part they are not experienced
15 with fish diseases, so they come to me. It is one of my
16 responsibilities to train them on the diseases, parasites
17 that are most common on a farm.

18 MR. GILBERT: What are some of the challenges and
19 problems that you had to solve to become -- to solve or
20 overcome to have a successful fish farming operation?

21 MR. RAY: There are numerous problem solving
22 opportunities. Primarily one of our major problems is
23 keeping adequate oxygen in the water during the summertime.
24 There is also disease problems. There is also problems
25 associated with most businesses, of marketing your product

1 and raising your products.

2 MR. GILBERT: Depth of water becomes an issue and weeds
3 also?

4 MR. RAY: Our ponds are restricted to four-feet deep.
5 Obviously we must keep water in them, weed control,
6 vegetation control, pond weeds is largely controlled by
7 managing for algae. We have also used grass bark currently.

8 MR. GILBERT: What different species have you produced
9 and to what sizes have you grown them?

10 MR. RAY: We concentrate on production of channel
11 catfish. We also currently are producing blue catfish,
12 common carp, hybrid carp. Over the years in the past we
13 have produced hybrid striped bass. Have also produced
14 various sunfish species, minnows and so on.

15 As far as size, we, for the most part, have done our
16 own reproduction and spawning at the facility, and we have
17 sold anything from eggs all the way up to catfish weighing
18 76 pounds.

19 MR. GILBERT: Are you familiar with other fish farms in
20 your area that produce other species?

21 MR. RAY: Yes. There are a number of farms both in
22 Imperial County and also in the north end of the Sea,
23 Riverside County. Some of these farms produce tilapia,
24 other catfish, hybrid striped bass. There is an algae farm
25 producing spirulina and not too far out of the area is white

1 water trout company which produces trout.

2 MR. GILBERT: Your farm in the distance is located
3 fairly near the Salton Sea.

4 Do you visit it occasionally and do sometimes the
5 wildlife from the Sea visit your farm?

6 MR. RAY: Unfortunately, yes. We are -- one farm is
7 located approximately seven miles from the Sea. And, yes, I
8 have visited the Sea at times. I fish in the Sea and simply
9 observe conditions along the shoreline from time to time.

10 MR. GILBERT: On a little different subject, are you
11 aware of decisions that this Board has made and things that
12 have been said about IID's efficiency by Coachella Valley
13 Water District and Metropolitan Water District and U.S.
14 Bureau of Reclamation?

15 MR. RAY: Yes. Generally, what we are referring to is
16 that tailwater and canal spills are not beneficial use of
17 water.

18 MR. GILBERT: Does that have to do with IID's
19 efficiency?

20 MR. RAY: That is one of the charges that because of
21 these things they are inefficient.

22 MR. GILBERT: Do you think those things helped motivate
23 IID to transfer water and to make efforts to protect its
24 water rights?

25 MR. RAY: I think it was a primary motivation factor.

1 I don't think we agree that it drove Imperial Valley
2 residents to seek a transfer.

3 MR. GILBERT: Would following to conserve water and
4 maintain flows to the Sea make IID more efficient?

5 MR. RAY: I don't see how. In fact, that seems to be
6 exactly contrary to previous decisions and previous
7 charges.

8 MR. GILBERT: If running water into the Sea to keep it
9 full is determined to be a reasonable use of water, in your
10 opinion, should IID need to transfer water to protect its
11 water rights?

12 MR. RAY: I don't see why. It seems to me that the
13 best solution is to continue doing business as usual.

14 MR. GILBERT: On a little different subject. Some are
15 suggesting that IID should not reduce its inflows to the Sea
16 and that would be for the purpose of maintaining the surface
17 elevation of the Sea in an attempt to avoid harm to fish and
18 wildlife in the Sea.

19 What is your evaluation of that proposal?

20 MR. RAY: Looking at the Salton Sea from a geological
21 perspective, basically all landlocked bodies of water
22 eventually will become saline and no longer support fish
23 populations. It seems to me currently that the Sea is going
24 through the most unstable period of that cycle from fresh to
25 salt, and it is unstable for a number of reasons. One, of

1 course, you are familiar with is the high salt level. It is
2 unstable because of the high water temperatures that we have
3 in the Imperial Valley. It's unstable because of
4 unpredictable winds. It's unstable because the nutrient
5 levels in the Sea and so on.

6 This instability is, I think, one of the main sources
7 of fish die-offs, perhaps related bird die-offs and so on.
8 So if the Sea is allowed to go through the normal process
9 and pass through this unstable period and go into a saline
10 state, then I think many wildlife are going to benefit from
11 that because we no longer have those die-offs.

12 MR. GILBERT: That might have some affect on the odor
13 situation in the Sea?

14 MR. RAY: I think to a large extent the odors, from my
15 understanding, are from a variety of sources. Certainly
16 dead birds, dead fishes. I don't know percentage-wise how
17 much that would be. The mud flats also put off a fairly
18 strong odor from time to time.

19 So from the standpoint of fish die-offs, as the Sea
20 becomes more saline, first thing is going to happen is a
21 die, and larvae will not develop, they'll die. And then
22 later the eggs will not -- later stage eggs will not
23 develop, and you'll soon reach a stage where the fish will
24 even not attempt to reproduce or spawn. This will be a
25 gradual process.

1 What is going to happen once you no longer have
2 recruitment? The numbers of fish will become fewer and
3 fewer. The size of the remaining fish will become larger
4 and larger. So as soon as this recruitment begins to cease,
5 your biomass is going to decrease. So that means,
6 theoretically, that your die-offs will become less and less
7 magnitude in terms of pounds and, therefore, less odor from
8 fish die-offs.

9 MR. GILBERT: Let me ask a question about the salt. We
10 heard testimony in this hearing that it would be necessary
11 to remove at least 4,000,000 tons of salt per year to
12 maintain the Sea's salinity at near the current levels. If
13 4,000,000 tons of salt were removed from the Sea annually
14 for 75 years, do you have any idea how many tons that would
15 be and how big of a pile it would make?

16 MR. RAY: When you asked me to do that calculation
17 earlier, I didn't really have a visual impression of what
18 that number might be. But when I've done it, I found that
19 if you were to place a rectangle pillar of salt on one
20 surface acre of ground, it would be approximately 20 miles
21 high. Or looking at it another way, it would be a rectangle
22 block of salt on one square mile totaling approximately 300
23 feet in depth.

24 MR. GILBERT: Thank you.

25 Do any of the proposed alternatives for the Sea that

1 you are aware of actually maintain or benefit all the
2 species in the transfer affected areas so it would make it a
3 true win-win situation for fish and wildlife?

4 MR. RAY: This is one of the things that bothered me in
5 the EIR/EIS. Any decision for mitigation is going to --
6 looking at a large population, any decision is going to --
7 have multiple species is going to have to pick some species
8 to the disadvantage of other species. That is fairly clear
9 when you look at the failure to prey relationship between
10 animals and birds and so on. I don't think it is possible
11 to do that.

12 So what I would like to see is the basis for those
13 decisions identified in the EIR/EIS and why those are good
14 decisions.

15 MR. GILBERT: I want to kind of move to the approach
16 that you have suggested, and I know you have outlined it
17 some in your testimony, and I would like to have you go over
18 a little bit of it.

19 Would you describe the approach that you have outlined
20 and explain why it might be a major benefit.

21 MR. RAY: The EIR/EIS has identified a number of
22 potential problems with the transfer and the resulting
23 decline in the elevation of Salton Sea. One of these that
24 has been discussed is the potential dust problem or alleged
25 dust problem. One problem, of course, is odor. There's

1 other potential impacts such as wildlife and so on. And
2 there is also aesthetic problems of a huge expanse of
3 shallow shoreline.

4 MR. GILBERT: Did you mention dust?

5 MR. RAY: And dust, right. True.

6 And the other thing that bothers me is some of the
7 proposals also propose taking farmland out of production as
8 a mitigation measure. And it seems to me that the proper
9 mitigation for the Salton Sea should deal with mitigating
10 for consequences of the receding shoreline. And I think
11 that can partly be dealt with by augmenting the natural
12 geological process of delta development. In other words as
13 the Sea recedes and the inflowing waters travel further and
14 further to reach the Sea, they're going to naturally develop
15 certain delta structures or wetland-type structures.

16 So my feeling is if we were to augment that process,
17 and this is not constructed wetlands because they could be
18 extremely expensive, is to augment that geological process
19 of delta formation wetland development and so on. We can
20 try to cover as much of the receding shoreline as possible
21 with delta-like structures such as meandering streams,
22 lakes, islands, those kind of structures, particularly cover
23 as much of the wetland as possible. Most of these are
24 flatlands, most of these are located in the vicinity of the
25 Alamo and the New River, and to some extent the Whitewater

1 River.

2 So by spreading the water, augmenting the delta making
3 process, we can cover as much of that area that is most
4 likely to see dust problems. That is the flatest area of
5 the Sea.

6 MR. GILBERT: That would be covered with either
7 vegetation or with moisture?

8 MR. RAY: Exactly. And it would also require
9 assistance to speed the process up. It would require
10 assistance from -- human assistance in terms of helping it
11 reestablish vegetation and trying to intentionally cover as
12 much of the area as possible because of the dust potential
13 problems.

14 MR. GILBERT: That would provide habitat for various
15 forms of wildlife?

16 MR. RAY: Again, that is a decision making process.
17 Delta development is going to primarily develop the wading
18 and shoreline birds at the expense of open water birds that
19 is pelicans. But it's a decision making process that
20 decides which species you are going to benefit.

21 MR. GILBERT: Let me go back to approach one as is
22 described in the EIR. Are you familiar with that
23 description in the EIR?

24 MR. RAY: Yes, I think this is one that is called the
25 hatchery approach, and I have several concerns with that.

1 One is that it fails to recognize one of the biological
2 aspects of tilapia. They are not a cold water fish. They
3 are a tropical fish. When water temperatures reach the
4 neighborhood of 60 degrees or below, their immune system
5 begins to break down. They no longer have a high resistance
6 to disease. And so if they are exposed to these lower
7 temperatures for any period of time, they'll begin to die
8 from diseases from the parasites and so on.

9 So from that standpoint it creates a problem. And the
10 approach one had two phases. One is to produce tilapia and
11 put them in the Salton Sea. Even now I think the
12 temperatures in the Sea is at that very near critical level
13 during the winter and probably does affect some of the
14 die-offs. If we drop the Salton Sea another additional
15 feet, three feet, five feet or even as much as 20 feet, it
16 is going to affect the average winter temperature,
17 particularly on the coldest days. So we are going to
18 increasingly see fish die-offs from temperature related
19 problems.

20 It also included a component of putting fish in ponds,
21 basically freshwater ponds. My ponds run three to four feet
22 deep, and I think these proposed ponds are in the
23 neighborhood of four to five feet deep. Tilapia will not
24 survive in my ponds during winter except on extremely rare
25 occasions, maybe one year out of ten. Is my water warm

1 enough to support tilapia population over the winter? So we
2 are going to see the fish during the winter in these ponds
3 begin to die. It is going to be impossible to keep
4 sufficient live fish in these ponds. During the winter it's
5 been the high bird population that is present in the
6 Imperial Valley. Many of those bird species greatly thin
7 out or leave the area altogether during the summer. So the
8 birds are not going to get the advantage of the fish in the
9 summer and they are not going to get the advantage of many
10 of them in the winter unless you have a zoo-like situation
11 where you truck fish in every day. The birds come in every
12 day and feed.

13 MR. GILBERT: Do you think there is quite a bit of risk
14 in the mitigation proposals and that they might need major
15 modifications, may cause considerably more than anticipated,
16 result even in unexpected negative impacts?

17 MR. RAY: Approach one, and it is based on an
18 open-ended process. That is to identify how many fish are
19 being stocked. It is left up to a decision by Fish and
20 Wildlife Service or some other wildlife agencies as part of
21 Fish and Game to make those decisions. You have an
22 open-ended situation with no way of predicting cost,
23 absolutely no way at all.

24 MR. GILBERT: Would indemnification against future
25 claims for damages or impacts be important to you?

1 MR. RAY: It would be important to me from several
2 standpoints. One is as being a user of water provided by
3 IID, I would anticipate increasing my high water delivery
4 cost. And there is some risk of being held individually
5 responsible, I suppose, for environmental consequences of
6 the transfer.

7 MR. GILBERT: Would you say that indemnification might
8 even be essential before you would support the proposed
9 transfer?

10 MR. RAY: Yes. Because I would be putting my business
11 at risk from that standpoint of my projection costs and
12 maybe even my capital expenditure. I might lose it all.

13 MR. GILBERT: We have a minute and a half left, and I
14 have just one or two more subjects I would like to have you
15 deal with.

16 Are you aware of proposed restrictions that might be
17 put on ag return flows in order to alleviate nutrient
18 problems in the Salton Sea?

19 MR. RAY: Yes. In my capacity as a member of the
20 Nutrient Technical Advisory Committee we have been meeting
21 once a month for the past four months or so, considering how
22 to deal with water quality requirements relating to
23 nutrient, primarily phosphorous, as it relates to the Salton
24 Sea. And so that process has began. There is no way of
25 predicting the outcome of that, but except to say that it

1 will increase cost to farmers because of the discharge, use
2 of the discharge waters.

3 MR. GILBERT: Is it your position that these costs
4 should be covered under the environmental over wrapping
5 limits in the transfer agreement?

6 MR. RAY: To the extent that it is a consequence of the
7 transfer.

8 MR. GILBERT: Would you call things like that a
9 potential loophole?

10 MR. RAY: Exactly. I don't know that those kinds of
11 problems are addressed in any way in the agreement.

12 MR. GILBERT: Going back to approach one, do you see
13 that as having an affect on pupfish and the endangered
14 species pupfish?

15 MR. RAY: The EIR/EIS approach one, the so-called
16 tilapia hatchery proposal, is also a pupfish proposal, and
17 it seems to me like they are essentially diametrically
18 opposed. One of the principal reasons for this is tilapia
19 probably is one of the heaviest predators on the desert
20 pupfish. They not only compete for habitat, but I think
21 probably tilapia might have been consuming a number of the
22 pupfish. And pupfish proposal intentionally requires that
23 the drain be connected with the Salton Sea. And that would
24 certainly expose the pupfish to the tilapia in the Salton
25 Sea and those that are kept there as a result of the

1 hatchery project.

2 MR. GILBERT: Anything else you would like to add?

3 MR. RAY: Briefly, regarding the EIR/EIS. Mitigation
4 measures are always going to be choices, and choices made by
5 humans. It seems that these choices should be biased
6 towards native species and should be biased to favor these
7 native species over exotic species. In other words, the
8 tilapia is an exotic species. The corvina and the other
9 fish and many of the organisms in the Salton Sea are exotic
10 organisms. Many of the birds in the Salton Sea are now
11 invasive species. So it seems to me any mitigation should
12 concentrate of those native species and more natural
13 historic land forms.

14 MR. GILBERT: Thank you.

15 I won't try that again. Appreciate your tolerance.

16 CHAIRMAN BAGGETT: With that, Mr. Du Bois.

17 ---oOo---

18 CROSS-EXAMINATION OF LARRY GILBERT WITNESS

19 BY MR. DU BOIS

20 MR. DU BOIS: Mr. Ray, I want to check with you about
21 one thing that you previously expressed orally. I believe
22 when you were discussing the livelihood of tilapia in the
23 wintertime you used the expression 60 degrees below
24 something, and I want to ensure that you did not mean 60
25 degrees below zero or you meant degrees below 60 degrees

1 above?

2 MR. RAY: I am glad you caught that. I was referring
3 to 60 degrees Fahrenheit. Those water temperatures below 60
4 degrees Fahrenheit that we would begin seeing increasing
5 problems of survival.

6 MR. DU BOIS: Thank you.

7 Do you think there is much risk in this plan that is
8 put before you of mitigation and risk of a liability?

9 MR. RAY: There's a number of risks and liabilities.
10 Certainly, those dealing with environmental consequences.
11 The District and perhaps individuals, farmers, will be at
12 risk there. As the Sea recedes we may be at risk from
13 landowners that are along the Salton Sea and the affect that
14 that may have on the property value. And if the farm
15 community is at risk from the standpoint of producers, then
16 I think the entire valley community is at risk because they
17 interact and they're dependent on one another.

18 MR. DU BOIS: Is the indemnification against claims for
19 such impacts important to you in deciding whether to support
20 the transfer or not?

21 MR. RAY: It is not only a major interest and concern
22 regarding the transfer, it also should be related to a
23 pricing structure so it can adequately cover those risks or
24 deal with those risks.

25 MR. DU BOIS: You have discussed in your testimony

1 another approach that might minimize some of the most
2 important impacts of conserving water. Would you discuss
3 those impacts? I think one of them referred to land values
4 around the Sea.

5 MR. RAY: Those -- the approach one is most likely to
6 be sighted in the mouths of the current rivers. I have been
7 to the Sea and current canals and so on. For the most part
8 these are the low lying areas, and they are not in the areas
9 where the small communities are. But for those properties
10 in the vicinity of where the delta and the wetlands
11 structures are formed, then, yes. I think that would
12 approve the aesthetics of the value, consequently for those
13 properties that I value of property.

14 It would not only provide possible hunting
15 opportunities, fishing opportunities, but bird watching and
16 other recreational opportunities as well.

17 MR. DU BOIS: I would like to ask you a couple
18 questions that are not covered in your testimony, but to my
19 knowledge and will you verify it, they're somewhat of a
20 health advisory against eating fish that are raised in the
21 Sea.

22 MR. RAY: That is my understanding, is that because of
23 the high salinity level, pregnant women have been advised
24 not to eat tilapia very often. I don't know exactly how
25 often the current recommendation is, but that is an advisory

1 that has been published locally in the papers in Imperial
2 Valley.

3 MR. DU BOIS: Do you have any experience or knowledge
4 of anyone becoming ill or affected by events of eating fish
5 from the Sea?

6 MR. RAY: No, I do not.

7 MR. DU BOIS: Could you give us an idea of what the
8 value of the fishing industry in Imperial County is to the
9 county?

10 MR. RAY: The commercial, aquaculture fishing?

11 MR. DU BOIS: Yes.

12 MR. RAY: It has varied somewhat over the years, but it
13 is in the neighborhood, I think, 10- to \$12,000,000 a year,
14 and that number is underreported because all the statistics,
15 all the farms have not been interviewed or surveyed.

16 MR. DU BOIS: I think I have no other questions.

17 Thank you.

18 CHAIRMAN BAGGETT: Thank you.

19 Mr. Rodegerdts.

20 Mr. Rossmann.

21 MR. ROSSMANN: Your Honor, I am very curious as to what
22 wildlife from the Salton Sea visits his ranch, but I can
23 learn that later.

24 CHAIRMAN BAGGETT: Defenders.

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

---oOo---

CROSS-EXAMINATION OF LARRY GILBERT WITNESS

BY DEFENDERS OF WILDLIFE

BY MR. FLETCHER

MR. FLETCHER: Good afternoon, Mr. Ray. I am Brendan Fletcher representing Defenders of Wildlife.

I have a few questions about the issue of temperature that you discussed in your direct testimony. Some relate to the HCP alternative and some relate to the Salton Sea itself. Now you said you raised tilapia at least in the past?

MR. RAY: Yes.

MR. FLETCHER: Do you raise them currently?

MR. RAY: I have some on the farm.

MR. FLETCHER: You said that a temperature below 60 degrees Fahrenheit their immune system begins to break down and they become vulnerable to disease; is that right?

MR. RAY: Correct.

MR. FLETCHER: How do you maintain tilapia on your farm -- let me back up one question. Water temperatures in a pond three to four feet deep are likely to fall below 60 degrees during winter; is that right?

MR. RAY: Yeah. Any pond that is three to four feet deep.

MR. FLETCHER: So how do you raise tilapia under those

1 conditions?

2 MR. RAY: We also have -- primarily we are using
3 Colorado River water for fish production. We also have some
4 geothermal wells, water coming out of the ground at 117
5 degrees. That is also true of the algae, large tilapia
6 farm that is 20 minutes away from me. They also have
7 geothermal wells to produce the fish during the winter.

8 MR. FLETCHER: I guess in a manner of speaking you can
9 say you heat the water?

10 MR. RAY: Exactly.

11 MR. FLETCHER: Now, I guess I assume that you heated it
12 by mechanical methods, and that doesn't appear to be the
13 case. Let me ask you this: Would there be a sufficient
14 water supply from these geothermal wells to heat 5,000 acres
15 of fish ponds about five feet deep, to the best of your
16 knowledge?

17 MR. RAY: To my knowledge there is basically two
18 geothermal reservoirs, groundwater reservoirs, that might be
19 utilized. One is at the hot mineral spas, that area up
20 there. That water table already dropped considerably and
21 continues to drop. So I would say there is not enough water
22 at that resource. The reservoir that I get my water out of
23 is a low yielding reservoir meaning that the gallons per
24 minute flow is very low because it's coming from a very,
25 very fine sand. I don't know the extent of that reservoir,

1 fairly large. But there is a fair amount of water there.
2 It would be extremely difficult, costly to develop because
3 the water is approximately 850 to a thousand feet below the
4 surface.

5 Is there enough water? Yes, for a certain amount of
6 time. How long, I don't know.

7 MR. FLETCHER: Do you have any experience using
8 mechanical methods to heat ponds or enclosures at your farm?

9 MR. RAY: It doesn't take very much math to calculate
10 that. It is extremely prohibitive to heat water by any
11 means for fish.

12 MR. FLETCHER: On a scale of 5,000 I guess it would --

13 MR. RAY: Unfeasible.

14 MR. FLETCHER: -- be unfeasible?

15 You mentioned that you couldn't predict the cost of
16 HCP Alternative 1?

17 MR. RAY: That's correct.

18 MR. FLETCHER: Why is that?

19 MR. RAY: It doesn't identify how many fish are being
20 produced, doesn't -- that is the number one problem. You
21 don't know how much are produced.

22 MR. FLETCHER: I will move to the Salton Sea.

23 You had also mentioned that temperatures in the Salton
24 Sea can be a problem for tilapia. I believe that you
25 testified that with the shrinking of the Sea that the Sea

1 encounters lower temperatures during the winter; is that
2 correct?

3 MR. RAY: That is correct.

4 MR. FLETCHER: Those lower temperatures could occur
5 with relatively small amount shrinkage of the Sea; is that
6 correct?

7 MR. RAY: With relatively what?

8 MR. FLETCHER: Small shrinkage of -- small amount of
9 shoreline regression?

10 MR. RAY: Changes are going to occur, exactly. The
11 magnitude is going to vary with the magnitude of the drop in
12 Sea level.

13 MR. FLETCHER: Is it possible that as the Sea recedes
14 the shoreline recedes and, of course, salinity increases at
15 the same time, is it possible that temperature could become
16 a problem for tilapia before salinity actually does within
17 the Salton Sea?

18 MR. RAY: You know, I can't say for certain, but I
19 think even now certain of the tilapia die-offs in the winter
20 are currently temperature related.

21 MR. FLETCHER: Thank you very much.

22 I have no more questions.

23 CHAIRMAN BAGGETT: Thank you.

24 We have National Wildlife.

25 Audubon.

1 Sierra Club.
2 PCL.
3 Salton Sea Authority.
4 Not present.
5 Colorado Tribes.
6 MR. SHEPARD: We waive.
7 CHAIRMAN BAGGETT: San Diego.

8 ---oOo---

9 CROSS-EXAMINATION OF LARRY GILBERT WITNESS
10 BY SAN DIEGO COUNTY WATER AUTHORITY
11 BY MR. SLATER

12 MR. SLATER: Good afternoon, Mr. Ray. Pleasure to
13 greet you as the last witness of this phase.

14 I would like to start with your testimony. And you
15 outlined a series of events that you thought were relevant
16 that lead us up to today. I guess the reference on Page 1
17 of Gilbert 14, which is your testimony, and they begin with
18 an Elmore petition and followed by State Board decision and
19 then the third bullet item in your testimony is that your
20 perception was that IID negotiated an agreement with
21 Metropolitan that was under duress.

22 Is that correct?

23 MR. RAY: Meaning that prior events and outside forces
24 were one of the major factors that lead to the event.

25 MR. SLATER: Can you describe what those outside

1 events might have been?

2 MR. RAY: Primarily accusations of the water IID
3 system, the irrigation system, not being efficient enough
4 and that if IID would only prove its efficiency then lower
5 right holders would be getting more water.

6 MR. SLATER: Those allegations derived from what
7 source? Do you know?

8 MR. RAY: No. For the most part I don't have direct
9 knowledge, but in discussions and reading Coachella Valley
10 Water District, was one of those.

11 MR. SLATER: Then, again, further on in your testimony
12 you indicate that IID then negotiated an agreement with San
13 Diego. And again you indicate that your perception is that
14 that was under duress. Am I right?

15 MR. RAY: That was -- right, correct.

16 MR. SLATER: And circumstances for that duress were?

17 MR. RAY: Somewhat similar.

18 MR. SLATER: Would I then also understand that would be
19 the same with regard to the next agreement that IID
20 negotiated, the Quantification Settlement Agreement?

21 MR. RAY: That would be my opinion.

22 MR. SLATER: In summary it was a concern about
23 efficiency with regard to its irrigation system, correct?

24 MR. RAY: Correct.

25 MR. SLATER: Further on in your testimony, again here

1 today, you referenced the idea that litigation measures
2 associated with the EIR/EIS as it relates to the transfer
3 ought to focus predominantly on restoration of the receding
4 shoreline?

5 MR. RAY: Rate. And that is in part because of
6 financial constraints, funds available. That would be an
7 immediate problem as far as human population is concerned.

8 MR. SLATER: You identify there are a number of
9 benefits associated with the mitigation program that would
10 be directed at the receding shoreline, correct?

11 MR. RAY: There are some benefits.

12 MR. SLATER: One of them would be received by native
13 wildlife; is that correct?

14 MR. RAY: Some wildlife.

15 MR. SLATER: Increase in property values?

16 MR. RAY: Yes.

17 MR. SLATER: Aesthetics for the Salton Sea area and
18 also help dust control, right?

19 MR. RAY: Yes.

20 MR. SLATER: Mr. Ray, is it your impression that the
21 Salton Sea is presently receding?

22 MR. RAY: It's not at its highest level. From that
23 standpoint -- I think within the last ten years there has
24 been higher levels. Using that as your base, yes, it has
25 receded somewhat.

1 MR. SLATER: It is your impression that into the future
2 that the Salton Sea will continue to recede?

3 MR. RAY: Under current situation, yes.

4 MR. SLATER: Without regard to whether the transfer to
5 San Diego goes forward, the Salton Sea will continue to
6 recede, correct?

7 MR. RAY: I think that is the most likely conclusion.

8 MR. SLATER: In your impression it would be a good
9 idea, wouldn't it, for these mitigation measures to be
10 pursued even if the transfer didn't go forward?

11 MR. RAY: Once -- as soon as the problems materialize,
12 yes.

13 MR. SLATER: Thank you.

14 I have no further questions.

15 CHAIRMAN BAGGETT: Mr. Osias. Pressure is on. The
16 last one. You have an hour.

17 MR. OSIAS: Now what I need is a good clip.

18 MR. ROSSMANN: Your Honor gave him a good 10 K time
19 yesterday. How about a hundred yard dash time today.

20 ----oOo----

21 CROSS-EXAMINATION OF LARRY GILBERT WITNESS

22 BY IMPERIAL IRRIGATION DISTRICT

23 BY MR. OSIAS

24 MR. OSIAS: Mr. Ray, I take it after all that joking
25 you know who I am?

1 MR. RAY: Yes.

2 MR. OSIAS: Nice to meet you.

3 The HCPs that you reviewed in the EIR -- you know what
4 HCP stands for?

5 MR. RAY: Habitat Conservation Plan, yes.

6 MR. OSIAS: And do you know who IID is negotiating with
7 respect to develop those?

8 MR. RAY: CH2MHill. Is that correct?

9 MR. OSIAS: No, that is their consultant.

10 MR. RAY: Do I know the individuals? No.

11 MR. OSIAS: Let me make my question easier. I take it
12 that in your business you probably have at least had
13 occasion to have to deal with the California Department of
14 Fish and Game?

15 MR. RAY: Frequently, yes.

16 MR. OSIAS: How about our friends at the U.S Fish and
17 Wildlife Service?

18 MR. RAY: From time to time.

19 MR. OSIAS: If a brown pelican shows up on your
20 property you understand there are certain rules because it
21 is an endangered species?

22 MR. RAY: That's correct.

23 MR. OSIAS: You have some familiarity with that?

24 MR. RAY: Yes.

25 MR. OSIAS: You understand from your review of the

1 EIR/EIS that at least one of the impacts of a receding and
2 salinating Sea is that some pelicans may die? You're aware
3 of that?

4 MR. RAY: You mean as a result of the receding?

5 MR. OSIAS: Yes.

6 MR. RAY: I am not certain about that. I mean, what I
7 am not certain about is whether thy death rate, the current
8 death rate, will accelerate or decline. It may decline.
9 Past year history.

10 MR. OSIAS: At least the EIR/EIS says there is some
11 risk that pelicans may be hurt by the transfer?

12 MR. RAY: Which pelicans are you talking about?

13 MR. OSIAS: Start with the brown.

14 MR. RAY: In my reading the EIR/EIS I think the
15 suggestion was that the brown pelicans will not be
16 significantly impacted by the Sea one way or the other.

17 MR. OSIAS: Without mitigation or with mitigation?

18 MR. RAY: Without or with mitigation. It is not as
19 critical to their or typical of their habitat.

20 MR. OSIAS: Since you asked me which, do white pelicans
21 have a different story?

22 MR. RAY: Have more impact on white pelicans.

23 MR. OSIAS: I guess what I was really trying to get to
24 was: Were you aware that the Imperial Irrigation District
25 is having to get the U.S. Fish and Wildlife Service and the

1 California Department of Fish and Game to approve their HCP1
2 plan in order to get a permit that would permit taking,
3 which is a legal, endangered species?

4 MR. RAY: Yes, I am.

5 MR. OSIAS: So I think one of your testimony comments
6 is why are we focused on certain species?

7 MR. RAY: Correct.

8 MR. OSIAS: Were you aware that Fish and Wildlife
9 Service and Fish and Game are themselves focused on certain
10 species?

11 MR. RAY: Right. And I don't understand some of why
12 they are focused on some of it. I would like it to be
13 identified why.

14 MR. OSIAS: You do understand that if the U.S. Fish and
15 Wildlife Service is focused on it it is hard for the
16 Imperial Irrigation District to not also be focused on that?

17 MR. RAY: I understand.

18 MR. OSIAS: They don't get to choose, to say, "Mr. Ray
19 raised some good questions. Can we focus on a different
20 bird species"?

21 MR. RAY: Sure.

22 MR. OSIAS: I think they'd be inclined to agree with
23 you if they can get the agencies to agree.

24 How about if the -- actually, let me ask you the
25 temperature question. If you move away from the mouths of

1 the rivers in the Salton Sea so we don't have that
2 influence, in the winter would the shallower areas be warmer
3 or colder than the deeper areas?

4 MR. RAY: Unless there is outstanding sources of warm
5 water, for instance, the leach water from the field, that
6 water is going to be relatively warm compared with the
7 waters in the delivery canals. There is also numerous warm
8 water strings scattered throughout the area. So ignoring
9 those kinds of impacts, yes, the shallower the water the
10 colder the water.

11 MR. OSIAS: It is really the inflows that would be the
12 warm spots, not just because it is shallow? The source of
13 heat comes from the inflows like the rivers or the drains or
14 geothermals?

15 MR. RAY: Yes, in most cases.

16 MR. OSIAS: If you wanted to feed -- tell me if you
17 know. If you don't, that's fine. If you wanted to feed
18 species that were struggling to find food in the Salton Sea
19 after it started to shrink other than tilapia, are there
20 other species that they will eat?

21 MR. RAY: It is going to vary with the target bird
22 species as to what would be most appropriate. You are
23 starting to get out of my area of expertise.

24 MR. OSIAS: Do any of them eat catfish?

25 MR. RAY: You bet. Love catfish.

1 Exactly how many acres of ponds do you have?

2 MR. RAY: Currently about 450 surface acres of water.

3 MR. FECKO: There is a mix of all kinds of fish species
4 in there?

5 MR. RAY: Each pond is devoted to one species and
6 approximately 95 percent of the production is devoted to
7 catfish. Maybe somewhere around four percent to blue
8 catfish and the remainder to everything else.

9 MR. FECKO: It's been alluded to sort of on cross here,
10 but do you have any problems with birds feeding on your
11 ponds?

12 MR. RAY: That is one of the problems and we do have a
13 degradation permit from U.S. Fish and Wildlife to help us
14 augment control measures to keep that to a minimum.

15 MR. FECKO: Do you do water or tissue sampling in your
16 ponds, water sampling for containments or tissue sampling
17 for contaminants?

18 MR. RAY: The USDA in years past has sampled our water
19 because our fish are sold for food fish. They sample the
20 water; they also sample the fish. That program they quit
21 doing six, seven years ago because they didn't find any
22 problems. We do sample our water ourselves in terms of
23 water quality, mostly testing ammonia, nitrates. We monitor
24 the oxygen level frequently. Salinity we occasionally
25 check, but very seldom because it doesn't vary that much.

1 MR. FECKO: Do you use a flow through system on your
2 property, in other words water from one pond goes to
3 another?

4 MR. RAY: No. Each pond is kept independent so each
5 pond has a separate water inlet and each pond has a separate
6 water outlet, for the most part. Because three years ago we
7 added to our system, we put in some concrete rectangular
8 tanks, what we call a raceway system. It is a recirculating
9 system, so that water is circulated and commingled.

10 MR. FECKO: How much water would you say you use per
11 acre in your operation?

12 MR. RAY: You know, I never actually sat down and
13 calculated that, but with evaporation levels in our area of
14 seven to eight feet a year, if we exchange, say, the water
15 in our ponds once a year, then we are in the neighborhood of
16 ten acre-feet per year, somewhere in that neighborhood.

17 MR. FECKO: Would you say it would be possible for your
18 operation to conserve any water under this plan if IID came
19 to you and asked you to conserve water as part of the plan?
20 Could you do it?

21 MR. RAY: Frankly, we have already started efforts to
22 conserve water. That was one of the reasons for starting
23 our recirculating raceway system, was to capture water that
24 we drain out of every pond, drain it through this system and
25 reuse it the second time. So there are other ways.

1 Basically, our number one problem is keeping oxygen in the
2 water during the summer. Currently our electric bill is
3 higher than our water bill, and the reason for that is
4 because of electric aeration that allows us to get more
5 useful use out of the water. If we were to increase the
6 amount and number of aeration units, then we would decrease
7 our water needs somewhat.

8 MR. FECKO: One last question. How many pounds of fish
9 do you produce a year?

10 MR. RAY: Last year we produced around one and a half
11 million pounds.

12 MR. FECKO: Thank you.

13 MR. PELTIER: Good afternoon. I have a couple
14 questions.

15 I think you're the first geologist that we've had up
16 here, so I --

17 During the past week, I am not sure how much of the
18 time you were here, so if I bore you with some of the
19 recounting of the testimony I apologize. We have had some
20 discussion about the use of evaporation ponds for salinity
21 control at the Salton Sea. In some of that questioning it
22 has come up that if you site those ponds within the Sea,
23 that essentially that reduces the surface area of the Salton
24 Sea, and given the existing inflows, you could remove an
25 adequate amount of salt by this method and maintain fairly

1 closely the water levels while controlling the salinity.

2 Do you agree with that or --

3 MR. RAY: I heard those proposals. And from my
4 understanding the in-cost reservoirs, the cost of the in Sea
5 reservoirs is quite how. But from a theoretical standpoint
6 it should achieve that aim, yes.

7 MR. PELTIER: Well, without thinking about the cost, I
8 know it is hard for you as a businessman not to think about
9 that, but do you think it would be possible to size ponds
10 like that in the Sea sufficient to also compensate for
11 reduced inflows?

12 MR. RAY: Can you elaborate what you mean by
13 "compensate"?

14 MR. PELTIER: Well, I guess I am just trying to get an
15 idea of the scale. If it is possible to remove enough
16 brine, but keep that by displacing some of the surface of
17 the Sea, if it is possible to maintain the water level and
18 the salinity by removing brine and having those ponds
19 located internally.

20 MR. RAY: If I understand your question, then, the
21 reason for the ponds is to remove salt from the Sea or is it
22 to remain -- to create a refuge where there is lower
23 salinity levels so the fish will survey in the ponds?

24 MR. PELTIER: No. This has nothing to do with the
25 fish. I am just talking about the -- I think the term of

1 the Sea's was displacement. If you put those ponds in the
2 Salton Sea instead of somewhere else that it displaced
3 enough of the surface area that it compensates for the loss
4 of water from the Sea from removing brine.

5 MR. RAY: And the rest of the Sea would continue to
6 evaporate?

7 MR. PELTIER: No. I think I'm confusing you. The idea
8 is you would remove -- as it was explained, if you pump
9 water out of the Sea into the ponds --

10 MR. RAY: Then you would just isolate certain portions
11 of the Sea and these isolated portions would be salt ponds
12 for evaporation only?

13 MR. PELTIER: Right.

14 The question is: Can those be sized big enough to
15 compensate for reduced inflows also?

16 MR. RAY: I don't know the answer to that.

17 MR. PELTIER: Thank you.

18 That is it.

19 CHAIRMAN BAGGETT: Have any redirect.

20 MR. GILBERT: Just one.

21 CHAIRMAN BAGGETT: You can ask from there.

22 ----oOo----

23 REDIRECT EXAMINATION OF LARRY GILBERT WITNESS

24 BY MR. GILBERT

25 MR. GILBERT: Under cross-examination when asked about

1 health advisory for eating fish, I think you stated that the
2 high salinity levels was the problem.

3 Did you intend to say high selenium?

4 MR. RAY: Correct, that is a correction. I did.

5 MR. GILBERT: That is all.

6 CHAIRMAN BAGGETT: Any recross on that narrow topic?
7 Want to enter your exhibits?

8 MR. GILBERT: Please. I would like to move Exhibit 14
9 into evidence.

10 CHAIRMAN BAGGETT: Any objection?

11 If not, it is entered.

12 You're excused. So we made it. Good work. We will be
13 home for dinner. I don't know if I will be, but some of you
14 will be. I don't think I will be home till probably about
15 eight or nine tonight.

16 With that. The only thing I think we didn't resolve
17 this morning, we didn't talk about a briefing schedule. I
18 think we resolved -- we got some dates in July. We have at
19 least a plan to get the EIR, final certified EIR to us.
20 We've got rebuttal.

21 And is everybody clear on that?

22 We will send out a letter Tuesday. We will get a
23 letter out Tuesday memorializing the rebuttal and how that
24 is going to work and the dates that are set aside in July to
25 put those in there.

1 This we won't. I just wanted to throw this out so you
2 can think about it over the next two weekends. For the
3 briefing schedule, I guess, one, we aren't going to have a
4 final transcript --

5 Off the record.

6 (Discussion held off the record.)

7 CHAIRMAN BAGGETT: We will come back at 1:00 on the
8 28th, Sierra Hearing Room in the CAL/EPA building. Enjoy
9 the couple of weekends with family and friends.

10 (Hearing adjourned 2:55 p.m.)

11 ---oOo---

12

13

14

15

16

17

18

19

20

21

22

23

24

25

